VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

MICHIGAN NATIONAL BANK, ET AL.,
APPELLANTS,

vs.

MICHIGAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

FILED JUNE 17, 1960
PROBABLE JURISDICTION NOTED OCTOBER 10, 1960

Q. Now, do you have a record of the number of new mortgages in total in number of mortgages and in dollar amounts that you took in the year 1952?

A. Well, I haven't that with me. I could have had it with me.

Q. Well, in any event, the Exhibits 36-C and 36-C-1 show the number of mortgages made during each of those fiscal years—that is, ending in '52 and ending in '53, does it not?

A. I haven't seen it, but I am certain that would be correct.

Q. Right here? (Indicating)

A. Yes. Yes, that's correct.

Q. And I see for the fiscal year ended June 30, 1953, you had a total of 396 mortgages, new mortgages, during that year for an amount in excess of $2,044,000?

A. Yes.

Q. And of the 396 mortgages, 120 were mortgages for purposes other than construction, purchase of home, or refinancing loans, or alterations?

A. Yes.

(754½) Q. And the total amount of such 120 mortgages exceeded $390,000; is that correct?

A. If it says so, that is, yes.

(755) Q. And these other purposes were such purposes as loans for personal use, buying automobiles or such other purpose as the borrower might have had occasion to use the money for; isn't that correct?

A. Yes, I think so.

Q. Now, do you recall how many investors you had in 1952? I will show you Exhibit 37-C—this is as of June 30, 1952—which shows a total number of investors of 5,872, for an investment of $5,602,457.

A. That would be correct.

Q. And you try to get as many new investors as you can, do you?

A. Yes.

Q. And the more investors you get capital from, the more money you have available for your mortgage end of your business; isn't that correct?

A. And liquidity.

Q. And liquidity, yes. And did you seek out investors of all economic and income class levels, sir?

A. Well, general advertising to whatever class that is.

Q. You appealed to all classes?

A. Whatever newspaper and our direct mail to our own members.

Q. You know a lot of your investors, don't you?

A. Yes.

Q. A lot of them professional men?

A. Some of them.

Q. A lot of them business men?

A. Yes.

(756) Q. Corporations?

A. No.

Q. Trustees of various funds?

A. Some, but few.

Q. Do you have any trustees of pension funds?

A. Not to my knowledge. We might have one now, but not in '52.

Q. And do you have any charitable organizations or societies that invested funds?

A. Yes, I think maybe about one.

Q. Any state or municipal agencies of any kind?

A. They don't do that much any more.

Q. Did they in '52?

A. I can't tell you for sure. We have had occasionally, but very small amount.

Q. In fact, you sought investors. Anyone who read your ad in the paper would be an investor, the more the better?

A. Well, we like some assurance it is going to be steady money. We didn't want fly-by-nights.

Q. Did you ever reject an applicant who made an investment?

A. Yes.

Q. How many?

A. That I don't know.

Q. Not very many?

A. When it was definitely short-term money, we don't want it.

(757) Q. When it was short-term money, you don't want it?

A. That is correct.

Q. But other than that, anyone who came along with his money you were willing to make him an investor, permit him to be an investor?

A. I think so.

Q. And then you permitted him to become a member at the same time?

A. Yes.

Q. And as far as types of mortgages you made, did you make mortgages on homes of people of all economic and income class levels?

A. We don't get much into really big ones, you know.

Q. You did loan up to $22,500.

A. Yes, but that was one out of I don't know how many loans we made. Strictly speaking, our loan range is well under twenty thousand.

Q. In fact, I think we have established in '52 it was a little less than $6,000 average.

A. I mean our top loan range is under twenty thousand.

Q. But you appeal to all people except big mortgage people, big home owners, you appeal to all class levels?

A. Well, we don't appeal to commercial, industrial.

Q. I mean on homes.

(758) A. On homes, yes.

Q. You had lawyers who were—

A. (Interposing): Some good ones.

Q. Some that had some money; that is unusual, sir. And doctors?

A. Right.

Q. School teachers? White collar workers?

A. Yes.

Q. Business executives?

A. Yes.

Q. Upon what did you loan your money? What was the basis in determining what you were going to do when you loaned money?

A. I don't quite get it.

Q. When an applicant came to you for a loan, did you require him to file a financial statement?

A. Definitely.

Q. And an income statement?

A. Credit rating, seniority, in some cases—I don't want to teach these other fellows the loan business now. Confirmation of sale and that type of thing.

Q. And you also had an appraisal on the property to be mortgaged?

A. Yes.

Q. And was the loan predicated solely on the appraised value of the property?

A. The limit was.

Q. But was the passing on the loan predicated solely upon that?

(759) A. No, on his credit rating, his seniority.

Q. Ability to pay?

A. Ability to pay, evidences of thrift.

Q. Character?

A. Pride in home ownership.

Q. You wanted to be sure you were going to get your money paid back, weren't you?

A. Definitely.

Q. Because if you didn't, why, you wouldn't have the earnings to pay to the people who invested in your shares?

A. There is a better reason than that. I think that we are in a fiduciary capacity where we owe this protection to the people. We handle their money for them, and that is our first responsibility.

Q. People who invest in shares, that is?

A. Well, that we feel deeply.

Q. People that invest in your shares?

A. Safety to them.

Q. You want to get as much return for them consistent with sound business and safety; don't you?

A. Correct.

Q. But in 1952 you felt that getting five and a half per cent interest and six per cent interest was following a safe policy along those lines, did you not?

* * * * *

(760) A. Whatever the current rate was.

Q. Whatever the rate was, all right. When you made a loan, was it your policy to record the mortgage?

* * * * *

Q. (By Mr. Klein): What was your policy about recording mortgages when you received them? Promptly or slowly?

A. Get them off just as fast as possible.

Q. Did you in 1952 pay a personal property tax, your association?

A. Yes.

Q. And how much was that personal property tax?

A. One hundred per cent of the assessed valuation, which is too much.

Q. And how much was the amount of the tax, and what was the assessed valuation, sir?

A. The amount of the tax for the city, that is just the city itself, the book value, that was $10,071.20. The assessed value was ten thousand. The tax was $90. The same book value, the December tax was on ten thousand, and the tax was $191.80.

Q. Did your association pay an annual privilege fee in 1952 to the (761) Secretary of State?

A. Yes.

Q. Do you know at what rate that was paid?

A. It is on there. I don't recall that rate.

Q. If I suggested one quarter of a mill, would that refresh your memory?

A. It would be one quarter of a mill on what?

Q. Of your paid up capital and legal reserve.

A. Well, if it is understood it is on the entire paid in capital, I would agree.

Q. Did your association in 1952 also pay an intangibles tax to the State of Michigan for the year '52?

A. Yes.

Q. And if I were to suggest that is forty cents a thousand, that would be correct, sir?

A. Yes.

Q. In what area did the association do business in '52, sir?

A. Well, legally within 50 miles in the county, but strictly speaking, not more than fourteen or fifteen miles.

Q. What was the population within the area in which you did business, roughly, in 1952?

A. Seventy, eigthty thousand.

Q. In 1952 what other institutions were loaning money to people in the Battle Creek area you described secured by home mortgages?

(762) A. Of course, the largest lender was the Michigan National Bank.

Q. And what other?

A. And the next one was the Calhoun Federal and then the Industrial came third and the Security, and the other commercial bank came fourth.

* * * * *

Cross Examination

By Mr. Dexter:

Q. May your share accounts be assigned?

A. Yes.

Q. And does it require the consent of the association to assign them?

A. Yes.

Q. May they be redeemed or repurchased at the option of the association?

A. Yes.

Q. Do your by-laws provide the method of redemption?

A. Yes.

Q. And a shareholder then is paid the face amount of the investment plus declared dividends; is that right?

A. Correct.

(763) Q. And that is the only thing the shareholder is entitled to, except in the case of complete liquidation, is that right?

A. Correct.

Q. And you have a constant turn-over in your shareholders, new ones come in and old ones going away?

A. Too many.

Q. You reserve the power to refuse anyone who wishes to become a shareholder or member?

A. We never have, but we could.

Q. Do you have that power reserved in your by-laws?

A. We do.

Q. So you do have the power?

A. Never used it.

Q. All right. Where do you keep the cash you are required to have on hand for business needs?

A. We keep for the current cash, that is, ten or twenty thousand dollars, in the respective offices—we have two branches, and—

Q. (Interposing): Do you keep any money in banks?

A. Yes.

Q. And are those in commercial accounts?

A. Yes.

Q. And do you draw on those accounts to lend money to your borrowers?

A. Yes.

(764) Q. And to draw on it for other expenses of the Association?

A. Correct.

Q. As I understand it, your sources of capital are your shares?

A. Correct.

Q. Do you borrow any money?

A. Occasionally.

Q. What is the source of your borrowed capital, borrowed money?

A. Well, we have used commercial banks some, and Federal Home Loan Bank.

Q. What percentage of your loans are made to individuals?

A. Well, there is ery seldom an exception.

Q. I see. Do you loan money to finance companies?

A. No.

Q. Are all of your loans secured by mortgages on farm and residential property?

A. No; we have FHA Title 1, but not in 1952.

Q. In 1952 were all of your loans secured that way?

A. Yes, except on stock; our folks can borrow against their shares.

Q. Except where their shares are used as collateral?

A. Correct.

* * * * *

(765) Q. Do you make any usecured loans on the strength of a borrower's financial statement?

A. In 1952, no; now, of course, FHA.

Q. My question relates solely to the year 1952?

A. O.K.

Q. What is the average duration of the loans which you make?

A. They are—the conventional are written for twelve years and seven months, and that has been extended a little to thirteen and fourteen, but seven and one-half to eight.

Q. 1952?

A. Yes, seven and one-half to eight years is the turnover, roughly.

Q. What is the average that the loan is made for, in 1952?

A. Twelve years and seven months was our standard conventional mortgage.

Q. Twelve years and seven months. You mean by average duration, that they were paid, some of them were paid up ahead of time?

(766) A. The average turn-over, about seven and one-half years.

Q. I see. That is by exercising the prepayment option?

A. Correct.

Q. Is there any penalty for prepayment?

A. None, except I should say on a construction loan for three years, after—in other words, we do not want to do the construction work and have it refinanced, so there is a penalty of one per cent until that three years is up, and on some of them there is that penalty.

Q. Is that a substantial part of your business, construction loans?

A. I would say thirty per cent of our mortgage loan business.

Q. This is the year 1952, you understand?

A. I think—well, 1952, I do not think it would have been that; maybe twenty-five per cent.

Q. You realize that all my questions relate to the year 1952, don't you?

A. Yes.

Q. In other words, a substantial part of your business is construction loans?

A. Yes.

Q. And do you loan to individuals for construction purposes as well as contractors?

A. Oh, yes.

Q. And at the time there is a commitment made, do you record the (767) mortgage?

A. Definitely.

Q. And it may be a period of time before the money is actually lent to the borrower?

A. That is correct; that is, for all of it.

Q. Do you sell or assign any of your mortgages?

A. No.

Q. Stressing the fact we are discussing the calendar year 1952, what was the situation of the mortgage money market in that year, in your area?

A. We had in good volume, as shown by two million, as far as us.

Q. Was there an excess of demand for the mortgage money over the money available in the area?

A. I think so; I think that shows we had around—well, we had some Federal Home Loan money, which indicated there was a strong demand; that is, in part it would indicate that.

Q. That was one of your indices? In other words, you borrowed from them in order that you might meet some of this additional demand?

A. We borrowed from them also for liquidity.

Q. To use your reserve borrowing power you have from them, from time to time in consideration of your liquid position?

A. Correct.

Q. In other words, when you have a potential of borrowing from (768) them, you can become actually less liquid on your own statement, as long as you have that power?

A. Correct.

Q. And, as I understand it, the Board changes their practice in terms of your borrowing from time to time?

A. Oh, yes.

Q. I assume you are a member of the Federal Home Loan Bank of Indianapolis?

A. Yes, we are.

Q. And what agency of the Government, if any, insures your shareholders?

A. Federal Savings & Loan Insurance Corporation.

Q. Generally, you operate within the purview of the law, the statutes and the by-laws applicable?

A. Yes.

Q. In other words, you carry forth purposes, and so forth, as expressed in those statutes and in the by-laws?

A. Yes.

Q. And by the regulations of the Federal Home Loan Board?

A. Correct.

* * * * *

(769) *Re-direct Examination*

By Mr. Klein:

Q. How many offices did you have in Battle Creek, did you operate in 1952?

A. Two.

Q. You had two. And, did you ever have—

A. (Interposing): One is really not in the city; it is in Lakewood, a suburb.

Q. It is within the general area in which you do business?

A. Yes.

Q. In 1952 did your association have occasion to re-finance mortgages on any loans then held by the Michigan National Bank?

A. I couldn't answer that; I wouldn't know.

Q. Did the Michigan National Bank have occasion to re-finance any mortgage loans held by you during that period?

A. Those that I heard about, they did.

Q. Those hurt a little more. You don't remember of the joy you would have when you took away from them.

A. In one case they just asked me for signatures; it was automatic.

Q. Now, on construction loans, in 1952, what was the normal period of time that elapsed between your granting a construction loan and the drawing down of the full amount of the loan?

(770) A. Well, that depends on whether the loan was made to bona fide contractors who operated a construction schedule, of, say, three months for completion, and usually performed that way, or whether—many of our loans we take with the little individual who has got an equity and he is expanding his home, and he does a lot of that, and acts as his own contractor. In those cases that might take nine months.

Q. What was the average time in 1952?

A. I couldn't tell you that, but I would say four or five months.

Q. Yes. And, did you make a substantial amount of loans to building contractors in 1952?

A. Yes, I would think so, we have.

Q. Quite a substantial amount?

* * * * *

A. Of course, we made it on the homes, you understand, not to the contractors.

Q. (By Mr. Klein, continuing): That is right, but they signed the note, did they not?

A. No, sir.

(771) Q. Who signed the note?

A. In most cases—we have an interim finance program where they contract to build a house, and take—we take title to it, and they have a right to buy it back;

but they are building it, many times, of course, they are building it for a specific applicant.

Q. I know, but in those cases you loaned the money to the contractor, did you not?

A. In some of those cases; in others we made it directly to the applicant, with the contractor having the right to make withdrawals.

Q. But in many cases the homes were not sold yet while they were being built by the contractors, were they?

A. In those cases we do it with interim finance, in most cases, where we have title, and he has the right to buy it back.

Q. The contractor?

A. The contractor.

Q. But you would loan him the money, you would take the title, and if and when he would sell it or pay it off, he had—

A. (Interposing): He had the right to do it, yes.

Q. And how much, in dollar amount, would you say you made in loans of that kind in 1952, your best recollection?

A. Give me that (indicating) where we have the construction loans. I would say probably a fourth of the construction loans that were outright were contractors' loans.

(772) Q. (Handing document to the witness.)

A. We showed 101 construction loans; I would say probably 25 or 30 per cent of those would be to contractors.

Q. So that would be around roughly $200,000, or so?

A. Yes, I think so.

Q. Yes. Now, you say in 1952 there was an excess of demand for mortgages above what the supply of mortgage money was, is that your recollection?

A. In view of the fact that my recollection is that VA was still fairly active in there—

Q. Yes.

A. —I would say, yes, because while that existed the demand was brisk for mortgages.

Q. And that was because of the VA mortgages?

A. In part.

Q. And because VA permitted mortgages up to 20 and 25 years?

A. Right.

Q. And what was the interest rate on VA mortgages?

A. Four and a half per cent, I think, in 1952; I am not sure when the rate changed.

Q. But your association preferred the conventional mortgages, for the most part?

A. Yes.

Q. And on those mortgages you made mortgages for twelve years and seven months at five and one-half to six per cent (773) interest, is that correct, Mr. Gates?

A. Yes.

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(774) Q. Mr. Gates, did you in 1952, did your association exercise a conservative and selective policy in making mortgages?

Mr. Dexter: Your Honor, I wish that Mr. Klein would define those terms. I dont know what a conservative and selective policy is.

Mr. Klein: All right. I will be glad to define them.

Q. (By Mr. Klein): By "selective," I mean if some mortgages were available where you would have to have a higher ratio of mortgage loan on the appraised value, or the borrower had less income or a lower economic standing, or the rate were less desirable, the association would or would not be selective so as to pick those which afforded the greatest security and the highest rate of return consistent with that security?

A. Of course, I will have to qualify that to this extent: That under those conditions, they select themselves. In other words, when the market gets to a higher rate because of shortage, it has its own elimination effect ultimately, and there are those who will pay inside of the current terms, and those who won't.

I wouldn't say, if we had forty applications and we could only make thirty, we wouldn't take the thirty best.

* * * * *

(776) Mr. Klein: Your Honor, we had had marked and identified with Mr. Doty, the Secretary of State's representative, Exhibits 25, 26, 27, 28 and 29, which were the Annual Reports of the Secretary of State to the Governor for the years from June 30, 1947 through June 30, 1951, inclusive.

There has already been offered and admitted in evidence Exhibit 30, for the year ended 1952, and 31 for the year ended June 30, 1953. I would now like to offer Exhibits 25 through 29 into evidence. Those precede the date in question.

The Court: That would be from 1947 to 1949, inclusive?

Mr. Klein: From '47 to '51, inclusive.

The Court: Pardon me. '51, inclusive.

Mr. Klein: Yes.

The Court: All right. What is your thought on that? Entirely aside from these other matters that we have already discussed, which I assume you make the same objection, but as far as the fact that these are for earlier years, have you any objection on that point alone, Mr. Dexter?

Mr. Dexter: Your Honor, I think that we have generally objected on the record to anything other than the year 1952 on any of this, as well as the general objection

as (777) to the materiality of the question of savings and loan associations period.

But that would be our objection there; that they are without the period and they are immaterial in showing competition for the year 1952.

The Court: I think they may be received, the earlier years. It seems to me I can think of some theories.

I am not passing upon the weight or probative force, merely the admissibility.

Mr. Klein: I would like to offer similar reports for the years from June 30, 1954 through June 30, 1957, inclusive, which have been marked Exhibits 32, 33, 34 and 35, the purpose being to show the general trend and development of building and loan associations.

The Court: Those are for the years afterwards?

Mr. Klein: Yes, sir.

The Court: The objection on that is sustained, and they are made a part of the separate record. If later on there is some reason to change my mind, you can pursue the subject further.

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(778) Mr. Dexter: Your Honor, I would object to the admissibility of any of these except the areas—any of Exhibits 25 through 35, except for those associations in the areas of alleged competition of plaintiff. I think the others are definitely immaterial.

The Court: Well, I am inclined to feel they are admissible for the reason—and perhaps that is part of the (779) reason that Mr. Klein has stated—and also because of the language of the decisions upon which you rely—the language of Judge Taft, for instance, in the case in which he decided and others.

It seems to me that if the Court starts out with the pre-conceived idea that Judge Taft had as to the nature

of building and loans, that the plaintiff has a right to dispel that idea by the means at hand.

Now, I don't say they are doing it or have done it. I merely say they have a right to do it if they can, and it seems to me this might have some effect.

Again, I won't pass upon its weight or its probative force, but it does seem to me it is admissible for the purposes indicated. As far as the actual competition, of course, only the others apply.

* * * * *

(781) Mr. Klein: Now, we have another matter, sir. There will be some question of Federal statutes and regulations. I haven't checked the Michigan law as to the necessity of proving it, but I think both Mr. Dexter and ourselves will be better off if we could stipulate that all Federal statutes and Federal regulations called to the Court's attention shall be considered just as though they were offered separately in evidence. I don't know if we have to offer them separately, but I have taken the precaution—

The Court: I have the impression that the Federal statutes, at least, we can take judicial notice, but I don't want to venture any—

Mr. Klein (interposing): Are you willing to agree to that, Mr. Dexter?

Mr. Dexter: My understanding has always been—

Mr. Klein: (interposing): Are you willing to agree to that, that we can each refer to Federal statutes and Federal regulations of the court?

Mr. Dexter: Yes.

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(788) Lansing, Michigan,
Monday, July 14, 1958,
9:30 o'clock A. M.

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Mr. Van Zile: May it please the Court, at this time we would like to offer the depositions and the accompanying affidavits which we took of the Grand Rapids Associations and their managing officers, and also certain affidavits and the depositions which Mr. Dexter has agreed to take in lieu of oral testimony.

We offer first the deposition of George L. Young, president of the Grand Rapids Mutual Federal Savings & Loan Association, taken August 14, 1956, and we offer that as Exhibit No. 73, and also the exhibits which were identified at the taking of his deposition, and which we have renumbered in the order in which they appeared in the deposition as Exhibits 73-A through G.

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Mr. Dexter: No objection, except a continuing one as to materiality.

The Court: Received.

(789) Mr. Van Zile: I might say, in order to expedite matters, the exhibits were marked in advance, and we also in our planning assigned exhibit numbers, so that in some cases there will be no exhibit, but I will mention those as we go along.

There is no Exhibit 74.

Next we would like to offer the affidavit of George L. Young and the exhibits accompanying that affidavit, which are the statements of condition for the years 1947 through 1950 of the Grand Rapids Mutual Federal Savings & Loan Association, which we offer as Exhibit 75, is the affidavit and Exhibit 75-A is for the year 1947,

75-B for the year 1948, 75-C for the year 1949, and 75-D for the year 1950.

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Mr. Dexter: No objection, except a continuing one as to materiality.

The Court: Received.

Mr. Van Zile: We would next like to offer the deposition of Harold O. Swanson, president of the Mutual Home Federal Savings & Loan Association of Grand Rapids.

The deposition we have marked as Exhibit 77. His deposition was combined with that of Mr. Weatherwax in one volume, and we offer as Exhibit 77 pages 1 through 43 of that deposition.

(790) We also offer the exhibits which were identified at the taking of that deposition, which we have re-numbered as Exhibits 77A through N.

While Mr. Dexter is looking through that, I would like to note for the record that there is no Exhibit 76.

Mr. Dexter: There are some pencil notations in Exhibit 77-E, which I assume are not offered as far as the exhibit is concerned. Apparently somebody has looked at it and made some pencil writing. I don't know that it means anything, but this figure here (indicating). You didn't offer that as part of Exhibit 77-E?

Mr. Van Zile: No.

Mr. Dexter: The same is true, there are some pencil notations on 77-D.

The Court: 77-D?

Mr. Dexter: D. With the assumption that those pencil notations are not part of the offer, no objections, except the one as to materiality.

The Court: Received, with that understanding.

Mr. Van Zile: We next offer, as Exhibit 78, the affidavit of Harold O. Swanson, which Mr. Dexter has agreed to in lieu of all testimony of Mr. Swanson, and the exhibits accompanying that affidavit; 78-A being the annual report of Mutual Home Federal Savings & Loan to the Federal Home Loan Bank, as of 12/31/52.

(791) 78-B being the published statement of condition as of 12/31/47.

78-C as of 12/31/48.

78-D as of 12/31/49.

And, 78-E as of 12/31/50.

Mr. Dexter: No objection except as to the materiality.

The Court: It may be received.

Mr. Van Zile: There are no exhibits 79 or 80.

We offer next the deposition of John H. Weatherwax, Secretary of the West Side Federal Savings & Loan Association of Grand Rapids as Exhibit 81, and the accompanying exhibits identified at the taking of that deposition, which we have re-numbered as follows:

81-A is the Charter and By-laws; 81-B is the form of certificate and savings pass book; 81-C is the form of borrower's pass book and certificate; 81-D is the published statement of condition as of 12-31-51; 81-E is the statement of condition as of 12-31-52; 81-F are two forms of applications for loans; 81-G is the form of savings share loan note; 81-H is the form of application for savings membership; 81-I is the form of application for savings membership (joint); 81-J is a summary of loans made from 1946 through 1952, consisting of two pages; 81-K is advertising appearing in 1952.

(792) I might say, too, that the offer of Mr. Weatherwax's deposition being that part of the combined deposition running from page 43 through the balance of the deposition, the first part being that of Mr. Swanson.

Mr. Dexter: No objection except the continuing one of materiality.

The Court: They may be received.

Mr. Van Zile: The next offer is Exhibit 82, the affidavit of John H. Weatherwax, which Mr. Dexter has agreed to accept in lieu of oral testimony; and the exhibits accompanying that affidavit, which are 82-A, the Annual Report of the Association to the Federal Home Loan Bank as of December 31, 1952; 82-B, the published statement as of 12-31-47; 82-C, the published statement as of 12-31-48; 82-D, the published statement as of 12-31-49; and 82-E, the published statement as of 12-31-50.

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Mr. Dexter: No objection, except a continuing one as to materiality.

The Court: Received.

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Mr. Van Zile: There will be no Exhibit 83.

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(793) VAN KEUREN, JAMES I., was thereupon called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. Your name is James I. Van Keuren?

A. Correct.

Q. And you are president of the Capitol Savings & Loan Association of Lansing, Michigan?

A. Yes, sir.

Q. And that Association is incorporated under the laws of what state, sir?

A. Michigan.

Q. Under the Building and Loan—

A. (Interposing): Act 50, 1887.

Q. And when was the Capitol Savings & Loan first incorporated?

A. 1890.

Q. And it has continued in existence by extension of the charter, or was it a perpetual charter?

A. No, it is an extension. 30-year charter. Changed the name two or three times.

Q. And its present name is Capitol Savings & Loan?

A. Association.

Q. And its original name was what, sir?

(794) A. The Capitol Investment & Savings Institution.

Q. And where does the Association have its business offices?

A. Principal office in Lansing and branch offices, two in Detroit and one in Pontiac.

Q. And the Lansing office does business in what area, sir?

A. Central Michigan. Mostly in Ingham County at the present time.

Q. You said you were president as I recall.

A. President and manager.

Q. And what do your duties entail in that capacity, sir?

A. Supervision of all the offices and trying to form the policy in conjunction with the Board of Directors.

Q. And in that capacity are you responsible for the supervision of the books and accounts and records of the Association?

A. Not entirely. We have people that have charge of that part of it. I don't have time to supervise all the records.

Q. They are directly responsible to you?

A. That is right.

Q. How long have you been with the Association?

A. I am in my thirtieth year.

Q. To get through with some of the formalities first, do you have with you, sir, a form of certificate or evidence of ownership of shares in the Association?

A. I think I have here. This is a full page certificate, and (795) we have an advance pay certificate. I am looking for an option savings book here. We have an option savings in which they pay in odd amounts. I think that is it right there.

* * * * *

A. Back in 1952 we had an installment savings. I found that book in here. Installment savings plan.

Q. Just so we can identify these, Mr. Van Keuren, Exhibit 84-A is an application for cumulative shares?

A. That is a prepayment. That is a little misleading, that name. They pay in $80, and they leave it until it matures to $100 a share.

Q. They make one payment and then it matures at a greater rate, is that it?

A. It all depends. They leave it in a certain time, and before maturity they get a higher rate. If they draw it out before maturity, they get a lesser rate.

Q. And Exhibit 84-A is a certificate for the shares which are issued in respect to that application 84?

A. Yes.

Q. And these were in effect and used in 1952?

A. Yes.

(796) Q. And Exhibit 84-C and D are what, sir?

A. Those are full paid shares at $100 each.

Q. C is the application for the shares?

A. Yes.

Q. And D is the form of the share?

A. That is right.

Q. The certificate?

A. That is right.

Q. For $100?

A. $100.

Q. Full paid?

A. And they receive dividends on those semi, and they are sent by check.

Q. As they are declared?

A. Yes.

Q. And these two Exhibits, 84-C and D, were used in 1952?

A. Yes, sir.

Q. And Exhibit 84-E and Exhibit 84-F are what, sir?

A. Option savings, they term that; they can start an account of $5 and add to it whenever they see fit. They get the regular dividends—they are credited to the account.

Q. To the extent that there has been investment in the shares?

A. That is right.

Q. And 84-E is the application and 84-F is the pass book?

A. Yes, sir.

(797) Q. Where is the certificate? Is that in the pass book?

A. No, it is right on the back.

Q. I see, in the back of the pass book?

A. Yes.

Q. I see. And that is Exhibit 84-F; and those were used in 1952?

A. Yes, sir.

Q. And 84-G and H are what, sir?

A. Those are, I think, the installment shares—yes.

Q. That is where applicant agrees to pay so much a month?

A. That is right.

Q. In payment of the shares?

A. That is right.

Q. And 84-G is the pass book with the form of certificate in the front?

A. Yes, sir.

Q. And H is the application for such shares?

A. That is right.

Mr. Klein: I should like to offer Exhibit 84, 84-A through 84-H, inclusive, in evidence.

• • • • •

Mr. Klein: There is no 84-B.

(798) Mr. Dexter: No objection except as to materiality.

The Court: Received:

Q. (By Mr. Klein, continuing): Do you have with you, Mr. Van Keuren, the charter and by-laws of the Association which were in effect in 1952?

A. I think I have somethink like that. Let's see what this is (examining document). This, I think, is the original charter. I am looking for the date. This is in 1934, renewal of the charter. This original charter is pretty near falling apart.

Q. I am asking you originally for the one that was in effect in 1952, Articles and By-laws which were in effect in 1952?

A. You don't care for the original?

Q. Yes, I do later. First I want the one that was in effect in 1952.

• • • • •

(799) Q. (By Mr. Klein, continuing): Exhibit 85-A-1 * * * is the certificate or the certified copy of the certificate of the Department of State, showing the original articles of association back in 1890, with certain amendments as indicated in the attached document, is that correct?

A. That looks like it, yes.

Q. And Exhibit 85-A-2 is a certified copy of the—

A. (Interposing): The original.

Q. Certain of the articles in 1890, and certain of the by-laws and the extension of time, and so forth, as described in the certificate, is it not, sir?

A. Yes.

Q. And Exhibit 85-A-3 are the by-laws, you say, that were in effect in 1952?

A. Let me look at the date. In 1950.

Q. And was Exhibit 85-A-3, the by-laws, also in effect in 1952?

(800) A. As far as I know they were.

Mr. Klein: I would like to offer Exhibits 85-A-1, 85-A-2, and 85-A-3 into evidence. * * *

Mr. Dexter: No objection to Exhibits 85-A-1, 85-A-2 and 85-A-3 except as to materiality.

The Court: Received.

* * * * *

Q. (By Mr. Klein): I will show you a printed document, 85-B, consisting of seven pages, marked "Capitol Investment-Building and Loan Association By-Laws," and ask you if those were the original by-laws of the Association when it organized in 1890?

A. As far as I know, they are.

Mr. Klein: I would like to offer Exhibit 85-B into evidence. * * *

* * * * *

Mr. Dexter: No objection except the continuing one as to materiality.

The Court: Received.

Q. (By Mr. Klein): Did you bring with you, Mr. Van Keuren, a form of application for loan used in 1952?

(801) A. Yes, sir. I think that's it there, application for mortgage loan (handing document to Mr. Klein).

* * * * *

Q. * * * The document which you handed me has been marked Exhibit 86, and you testified, I believe, that is a form of application for mortgage loan used by your Association in 1952?

A. As far as I know. I can't keep track of all the applications. It looks very similar.

Q. And on the reverse side there is a space requiring personal financial statement?

A. That is right.

Q. And income statement?

A. Yes.

Mr. Klein: I would like to offer Exhibit 86 into evidence (handing exhibit to Mr. Dexter).

Mr. Dexter: No objection except as to materiality.

The Court: Received.

The Witness: I might add, sir, that I am informed—I haven't looked it over—but that application required an application for membership in the Association also when they applied for a loan.

Q. (By Mr. Klein): But a borrower did not have to be a member (802) prior to applying for a loan?

A. No. He applied at that same time.

Q. And did he have to make any payment to become a member?

A. No. He had the right of one vote.

Q. But there was no obligation connected with his application for membership?

A. No.

Q. And he did not have to be a member prior to applying for a loan?

A. No. Some of them were members and others weren't, see.

Q. Most of them were not, though, in '52; isn't that correct?

A. I couldn't answer that.

Q. You can't answer that. You do and did in '52 seek loans from all groups and stratas of society in and around the Lansing area, did you not?

A. Well, here is a memorandum. We made 295 loans in our Lansing office in 1952, one million 270 thousand. Now, how many of those were members before they applied, I couldn't tell. They applied for membership when they applied for loans.

Q. And you were asked to prepare that, and we were advised, were we not, that it would be a very voluminous job to make a check of every application?

A. We couldn't do it. It was impossible.

(803) Q. I will show you an exhibit which has been marked Exhibit 36-B, and is on a printed form, "Building and Loan Division, Monthly Report," entitled, "Capitol Savings & Loan," for month ended December 31, 1952, and ask you if you recall that having been filed with the Office of the Secretary of State. It came from his files.

A. We followed the policy of filing monthly reports with the Secretary of State, Building and Loan Division, and this is evidently one of them.

Q. And this report was made out by your Association in the regular course of business and regularly executed and filed in connection with the regular course of business?

A. Yes, sir.

Q. And does it truly and correctly reflect the statement of the assets and liabilities of the Association for the month ended December 31, 1952?

A. Evidently it is as far as I can tell, because I haven't the other figures to refer to.

Mr. Klein: Your Honor will recall these exhibits were introduced when the Secretary of State's representative, Mr. Doty, was on the stand and we had undertaken to ask each witness about the correctness of them, but they were admitted in evidence at that time, I believe, subject to our connecting them with the witness.

Mr. Dexter: And, as I understand, your Honor, (804) subject also to the right of getting the original books and records if we deem necessary.

The Court: That is right.

Q. (By Mr. Klein): I will show you Exhibits which have been offered marked Exhibits 37-I and 37-I-1, which are photostats of the annual reports of the Capitol Savings & Loan Association for the period ended July 30, 1953, and July 30, 1952, respectively. I ask you if they bear your signature?

A. Yes, they do.

Q. And attached to the certificate are annual statements or statements of assets as at the end of those periods; is that correct?

A. Will you allow a correction? You said July 30.

Q. June. I misspoke.

A. That is the end of our fiscal year.

Q. June 30, 1953 and June 30, 1952.

A. That is right.

Q. And the exhibits attached have various figures and there are various reports and statements of accounts and loans and all that in each of the reports?

A. Covers about everything we do.

Q. And were those reports, Exhibits 37-I and 37-I-1, made out in the regular course of business and filed, and was it the regular course of business to make such reports and file the same with the Secretary of State of Michigan?

(805) A. We have to do it. That is, as I say, the end of our fiscal years, and besides the monthly reports.

Q. I see your sworn statement appears there. Are these reports, Exhibits 37-I and I-1 true and correct reports of the facts therein stated?

A. That is right.

Q. As appears from the books and records of your Association?

A. Yes, sir.

Q. Now, Mr. Van Keuren, you stated that your Association operated three offices. Do you have with you a balance sheet of your Lansing office as at 12-31-52?

A. I will look through here and see.

Q. Yes, sir.

A. That is our Lansing, yes, sir.

* * * * *

Q. I will show you a one-page statement marked Exhibit 87 and ask you if that is the financial statement of the Capitol Savings & Loan Company, Lansing office, as at December 31, 1952?

A. It is.

Q. And that truly and correctly shows the assets of the Lansing office and the liabilities of the Lansing office as at that date?

A. Yes, without the carry-over of the branch offices. We had to (806) segregate those from the other offices.

Q. Yes. And that shows, among other things, the mortgage loans outstanding at the Lansing office, conventional, GI and FHA as of that date?

A. Yes, that is right.

Q. And it also shows the shareholders' accounts for the Lansing office as at that date?

A. Yes, sir.

Mr. Klein: I should like to offer Exhibit 87 into evidence.

* * * * *

Mr. Dexter: No objection, except a continuing one of materiality.

The Court: Received.

Q. (By Mr. Klein): Mr. Van Keuren, did you bring with you a statement showing the number of loans made and the amount thereof in 1952 by your Association in the Lansing area?

A. Yes, sir.

* * * * *

Q. (By Mr. Klein, continuing): Is Exhibit 88 a statement of the (807) number of loans and the amount thereof made by your Association in the Lansing area in 1952?

A. It is.

Mr. Klein: I would like to offer Exhibit 88 in evidence.

* * * * *

Mr. Dexter: No objection except as to materiality.

The Court: It may be received.

Q. (By Mr. Klein, continuing): Exhibit 88 shows that in 1952 the Lansing office of your Association made 295 mortgage loans, the aggregate principal amount of $1,270,556.10?

A. That is right.

Q. Now, on what types of property were these loans made, Mr. Van Keuren?

A. Residential properties.

Q. Were there any commercial loans at all?

A. No, sir.

Q. None at that time on any—

A. (Interposing): No, sir.

Q. And you made FHA mortgages at that time?

A. A few.

Q. A few. And, what rate did you charge on those FHA mortgages?

(808) A. The rate, if I remember, was either four and a quarter or four and a half plus one-half of one per cent for insurance.

Q. The borrower had to pay that one-half of one per cent for insurance?

A. Yes.

Q. Then if that insurance reserve were not required by the FHA, he had the opportunity of getting that, or some part of it back, as to the extent it was not used by the FHA?

A. Well, if he prepaid that loan, he had to pay a penalty of some sort; I cannot remember what it was.

Q. Talking of the insurance feature?

A. Yes.

Q. But the half of one per cent was to insure all FHA loans, was it?

A. Yes.

Q. And if the insurance wasn't required, to that extent every person paying the one half of one per cent premium would get some part of that back?

A. I couldn't reply to that firmly.

Q. All right, very good.

A. I don't think they had any refund.

Q. What other types of mortgages did you make in 1952, sir?

A. Well, the regular type mortgages.

Q. Conventional, you call them?

A. Yes.

(809) Q. And what term mortgages was your average term, the best you recall, in 1952?

A. Well, I would say from thirteen to sixteen years on the average.

Q. Did you make some for less than thirteen years?

A. Some once in a while, with one per cent payment—would be twelve to thirteen—per cent on the principal.

Q. And what interest rate did you charge on the regular conventional mortgages?

A. That year?

Q. Yes, in 1952.

A. If I remember correctly, it depended on the security, but prime security was five and a half per cent, and some that didn't measure up to the other kind of security we would get six per cent for it.

Q. And on your regular, or conventional mortgages, what was the ratio of the loan to the amount of the appraisal of the property mortgaged?

A. All the way from two-thirds to seventy-five per cent.

Q. Did some of that depend on the financial—

A. (Interposing): The financial ability of the borrower.

Q. Of the borrower.

A. And the type of security.

Q. And the type of security. And, do you know the average amount of your mortgages in 1952, of your regular type of (810) mortgages?

A. I will ask Mr. Clark, do you remember the average amount on that? He is our assistant.

Q. I suppose we can get it by dividing those?

A. Yes.

Q. $1,270,000 by 295?

A. That is right.

Bob, will you do that for him, please?

Q. Well, it would run about $4,000 on that one, wouldn't it?

A. It would be, yes.

Q. Around $4,000, and did you make some GI loans in 1952 also?

A. A few, yes.

Q. And you say you only made a few FHA and a few GI's?

A. That is right.

Q. Was that because the interest rate on the FHA and the GI was lower than the conventional or regular mortgage?

A. I don't think that had so much to do with it as the fact that we didn't have the applications.

Q. Well, the interest was higher, was it not, on the—

A. (Interposing): On the conventional, yes, sir.

Q. And the more mortgage interest you earned, the more dividends you could pay?

A. Well, that would be reasonable.

Q. That is so, isn't it, sir?

A. Yes.

(811) Q. And the more dividends, or the higher rate you paid, the more you could attract depositors—not depositors, savings account holders?

A. That is about right.

Q. Now, did you bring with you any record of the taxes you paid in 1952 at the Lansing office, Mr. Van Keuren? The company paid an intangibles tax generally, didn't it, to the State of Michigan?

A. Yes.

Q. That was on its shares at the rate of 40 cents a thousand; is that correct?

A. I think that's correct.

Q. And then the Association also paid an annual privilege tax to the State of Michigan at what rate, sir?

A. I had that down here somewhere a minute ago.

Q. If I suggested one quarter of a mill, would that—

A. It says here 40 cents per thousand. That was on investments. A quarter of a mill would be on the—

Q. (Interposing): On the outstanding—

A. (Interposing): It is hard to keep all those figures in my mind. I think you are right.

Q. Did you pay a personal property tax in Ingham County in 1952?

A. Yes.

Q. Do you know how much that was and on what it was paid?

A. Well, the personal would be on the furniture and the fixtures.

(812) Q. And it amounted to how much, sir?

A. I couldn't tell you. * * * In addition, we paid our regular real estate tax on the building.

Q. * * * Yes, just like everyone else; is that correct, sir? Just an ad valorem tax?

A. Yes.

* * * * *

Q. Mr. Clark could get for us the amount of the personal property tax paid in?

A. Yes.

Q. But it was solely on the furniture and fixtures?

A. As far as I can remember, that's all it was on.

Q. Now, as I understand, your Lansing office, you have described where you operated in '52 and at the present time?

A. That's right.

(813) Q. When the Association was organized, was it initially in the Lansing area?

A. Yes. In the State of Michigan, I should say, because we had agents at that time all over the state.

Q. And you have had a substantial growth, I take it, from checking these documents, in the last number of years?

A. Well, we have had a substantial growth. Not exorbitant. Since 1952—I was looking at the statement here—we have doubled our assets—more than doubled.

Q. Since 1952?

A. Yes.

Q. And that is a result of your getting increased savings?

Mr. Dexter: Your Honor, I request that that statement be stricken from the record.

• • • • •

(814) Mr. Klein: All right. I would like that on a separate record, then, sir.

The Court: All right.

• • • • •

Q. Is the person who becomes a shareholder of the Association a creditor of the Association?

A. No, he is not.

Q. What is his right or relationship with the Association?

A. He is a member on a cooperative basis. They all share alike.

Q. Just like all shareholders of a corporation?

A. No, no. I beg your pardon.

Q. Share alike in what respect, sir?

A. In investment and withdrawal privileges.

Q. But he is a shareholder, is he not?

(815) A. He is a member, first.

• • • • •

Q. Was there any guaranteed rate of dividend in 1952?

A. No, sir.

Q. Were dividends declared dependent upon the earnings of the (816) Association?

A. Absolutely.

Q. And if the earnings are down, the dividends are down, is that it?

A. Sure. During the depression our dividends were down, and then when business picked up, we raised our dividends.

Q. And if the Association earns a higher rate of interest, it is enabled to make more money and declare greater dividends?

A. As a rule that would apply.

Q. Did the Association in 1952 seek investors in shares?

A. Oh, we did advertising, the same as we always have, and we had certain agents around the state that would send us in investments, on which we paid them a small commission.

Q. So you tried to get as many investors in shares as you could?

A. Nothing unusual. It is a normal basis that we advertise.

Q. Right. And was there any limit on the amount of deposits or share investments you would take?

A. Yes, sir.

* * * * *

(817) Q. Did your Association in 1952 appeal or (818) solicit investors in shares from any particular economic strata of investors, or did you appeal to anyone who was ready and willing to invest?

A. The general public. We didn't care for corporation investments or funds that were in trust for certain purposes. That would be like church funds or building a church. We have that. They want to put in money. We had one just the other day. They wanted to put in \$25,000 to build a church. Well, how soon will they start? "As soon as we get more money." We didn't like that kind of investment.

Q. You wanted a long range investment?
A. The individual investment.
Q. Did you have any corporate investors in 1952?
A. I couldn't answer that offhand. If we had, it was very few.
Q. Did you have any trusts in 1952?
A. Have any what?
Q. Trust investments?
A. I couldn't answer that.
Q. Any municipal or governmental agencies in 1952?
A. No. That was a time we had some school funds, you remember, and they ruled against us, that we did not have any right to carry it.
Q. Did you appeal solely to poor people as investors?
A. General public, not any class.

* * * * *

(819) Mr. Klein: Your Honor, Mr. Clark of the Association is going to furnish us with information about the personal property tax paid in Lansing in 1952. And, other than that, we have no further questions of this witness.

* * * * *

(820) *Cross Examination*

By Mr. Dexter:

Q. Mr. Van Keuren, do you have here with you a certificate of membership for a borrower member?
A. I think that is it right there (handing document to Mr. Dexter).

* * * * *

A. That was back in 1952, I think.
Q. Effective in 1952?
A. And later on we have a certificate—

Q. (Interposing): This is all we are interested in.
A. O. K.

* * * * *

(Thereupon the document above referred to was marked by the reporter as Plaintiff's Exhibit 84-I.)

A. In addition to that, we have another certificate of membership for land contract purchasers; that was for the mortgage.

Q. Was that in effect in 1952?

A. That is what I understand.

Mr. Dexter: I would like to offer this as Exhibit 84-J.

* * * * *

(821) Mr. Dexter: * * * I would like to offer Exhibit 84-I and 84-J.

Mr. Klein: No objection.

The Court: Received.

Q. To your knowledge, Mr. Van Keuren, was there any difference between the certificate of membership for a borrowing member and that of an account member?

A. Investment member?

Q. During 1952?

A. Well, there was a difference in the voting privilege.

Q. Was there any difference in the certificates themselves?

A. Well, an investing member has a different certificate than a borrowing member.

Q. Are they the same?

A. As far as membership is concerned, yes.

Q. And the nature of their membership is identical as far as the right to vote?

A. No; the borrowing member has a vote, one vote. Now, just (822) a minute, if he had three loans, he had three votes. The investing member, if he had $10,000 he could—he had a limit of four votes.

Q. I am speaking about what rights flow from being able to vote; are the voting privileges identical?

A. As far as I know, yes, except—

Q. (Interposing): In other words, a borrowing member and an account member would have the same privileges of voting at your annual meetings, for example?

A. Except the number of votes.

Q. Except with that qualification?

A. Yes.

Q. And he would have the same right, for example, to vote for the board of directors?

A. Yes.

(823) Q. To vote in reference to any policy determinations that were considered at the annual meeting, the same as an account member?

A. They all have the same privilege.

* * * * *

Re-direct Examination

By Mr. Klein:

Q. Mr. Van Keuren, on this voting matter, an investor, solely an investor who was not a borrower, how would his voting rights be determined?

A. He was qualified to vote only four votes, no matter if he had $10,000. A hundred votes, he could only vote four. A borrowing member, if he had one vote, could have one vote. If he had three loans or five loans, he had five votes.

Q. All this is set out in your by-laws, I think.

A. Yes, sir.

* * * * *

(824) SIBILSKY, CHESTER J., was thereupon called as a witness on behalf of the plaintiff, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Sibilsky, you are the manager of the Flint office of the Detroit and Northern Savings & Loan Association?

A. Yes, sir.

Q. And how long have you held that position?

A. Since 1919.

Q. So that you did occupy that position in 1952?

A. I did.

Q. And as manager did you have supervision of the affairs of the Flint office?

A. Yes, sir.

Q. And Detroit and Northern has a number of offices does it not?

A. Yes.

Q. And where are those offices located?

A. We have two in Flint and three in Detroit, the home office in Hancock.

Q. The home office is in Hancock?

A. That is right.

Q. All the questions I ask will be directed to 1952, unless I indicate otherwise.

Did you bring with you a form of certificate or (825) evidence of ownership of shares in your association that were in use in 1952?

A. I did, sir.

* * * * *

Q. I will show you a certificate which we have had marked Exhibit 89-A and ask you to identify it.

A. It is a certificate of fully paid.

Q. And 89-B is what?

A. An installment savings account with the certificate in the passbook.

Mr. Van Zile: I will offer Exhibits 89-A and B.

Mr. Dexter: No objection except a continuing one as to materiality.

The Court: Received.

Q. (By Mr. Van Zile): Did you bring with you the Charter and By-laws which were in use in 1952, Mr. Sibilsky?

A. These are certified copies.

* * * * *

(826) Q. I will show you exhibits which have been marked Exhibits 90-A and 90-B and ask you to identify them.

A. 90-A is a copy of the By-laws of the Association up to 1950, and the other one is the copy of the By-laws used since 1952.

Q. What date in '52?

A. March 11.

Q. So that between Exhibit 90-A and 90-B they reflect the By-laws governing your association for the entire year 1952, is that correct?

A. Yes.

Mr. Van Zile: I will offer Exhibits 90-A and B.

Mr. Dexter: No objection except a continuing one as to materiality.

The Court: Received.

* * * * *

(827) Q. (By Mr. Van Zile): I will show you a document that has been marked Exhibit 90-C and ask you what that is?

A. That is a copy of the original charter and by-laws.

Q. The original charter and by-laws of the Association?

A. Of the Association.

Q. And a document that has been marked Exhibit 90-D, and ask you what that is?

A. That is a copy of the change in the name.

Q. And what is the date of that?

A. 1914.

Q. And Exhibit 90-E?

A. That's a copy of the franchise to continue the corporate existence of the Association in 1918.

Q. That is an extension of the corporate existence?

A. Yes.

* * * * *

Q. And Exhibit 90-F?

A. That is also a copy of the extension of the corporate existence in 1948.

Q. And Exhibit 90-G?

A. That's a copy of the change of name in 1950.

* * * * *

(828) Mrs. Van Zile: I offer Exhibits 90-C through 90-G * * *.

Mr. Dexter: No objection except the continuing one as to materiality.

The Court: Received.

Q. (By Mr. Van Zile): And do Exhibits 90-C through 90-G represent all the changes that have taken place in the Articles of the Association of the Detroit & Northern, Mr. Sibilsky?

A. So far as I know.

Q. Did you bring with you a form of application for mortgage loan used by your Association in 1952? * * * And is Exhibit 91 the application for mortgage loan used by your Association in 1952?

A. That is correct.

Mr. Van Zile: I will offer Exhibit 91 * * *.

Mr. Dexter: No objection except as to materiality.

The Court: Received.

* * * * *

(829) Q. Have you brought with you a balance sheet showing the financial condition of the Flint office of the Detroit & Northern Savings & Loan Association as of December 31, 1952?

A. I have sir * * *.

* * * * *

Q. That includes both offices in the Flint area?

(830) A. Yes. We only had one office at that time.

Q. You only had one office at that time?

A. Yes.

* * * * *

Q. I will ask you to explain what Exhibit 92 is.

A. That is a balance sheet of the Flint office on December 31, 1952, and likewise it shows the amount of mortgages made in the year 1952.

Mr. Van Zile: I will offer Exhibit 92 * * *.

(831) Mr. Dexter: No objection except as to the continuing one as to materiality.

The Court: Received.

* * * * *

Q. * * * I will show you what has been marked as Exhibit 37-E and E-1, and ask you if you can identify those, Mr. Sibilsky?

A. Well, I presume they are correct, if they were taken from the Secretary of State's office; I have no direct knowledge of it.

Q. Is the same thing true of E-1?

A. Yes.

Q. One is an annual report to the Secretary of State, that being 37-E-1, for the fiscal year ending June 30, 1952, and 37-E being for the fiscal year ending June 30, 1953, right?

A. Yes.

Q. Are you familiar with Mr. Seaton's handwriting?

A. Yes.

Q. Is that his signature that appears there?

A. It looks like it.

* * * * *

(832) Mr. Van Zile: * * * there will be no Exhibit 93.

* * * * *

Q. Did you have anything to do with the payment of any taxes by Detroit and Northern?

A. Just local.

Q. Well, what local taxes did you pay?

A. City and county, property tax.

Q. Were they real property taxes?

A. Yes.

Q. Did you pay any personal property tax?

A. Yes.

Q. You did. Do you know how much the personal property tax was; (833) how it was computed?

A. I don't know; I don't know the figures; I know we paid them.

Q. Can you obtain that information for us?

A. Yes.

Q. Was the tax based upon your furniture, fixtures and equipment?

A. Yes.

Q. Referring to Exhibit 92, would that be the figure, $4,536.59 for furniture, fixtures and equipment?

A. Approximately; that is our depreciation; the city may not be the same, but that is approximate.

Q. So that the tax was based on approximately $4,500, is that right?

A. Yes.

Q. And in what area does the Flint office of Detroit and Northern do business?

A. Genesee County.

Q. * * * And, is that true as to both investors and borrowers?

A. No, investors might be outside the county.

* * * * *

Q. Borrower would be in the county in all cases?

A. Yes.

Q. What types of mortgage loans did you make in 1952?

A. Conventional and G. I.

(834) Q. Did you make any F. H. A.?

A. No.

Q. And that includes both secured and unsecured?

A. Secured; they are all secured loans; we made no F. H. A. at any time.

Q. You made no modernization or repair loans in the F. H. A.?

A. No.

Q. What other companies were making mortgage loans in 1952 in that area?

A. All the four banks; Genesee, and the Merchants and the Citizens Commercial, the Michigan National; some insurance companies.

Q. First Federal Savings?

A. First Federal Savings, yes.

Q. That was in the same area?

A. The same area.

Q. And in your dealings with investors ~~and borrowers, did you deal with any~~ particular economic class?

~~A. No.~~

* * * * *

(835) *Cross Examination*

By Mr. Dexter:

Q. Is your Association, or was it, run in 1952 in accordance with the by-laws and the statutes of the state of Michigan?

A. Oh, yes.

Q. That is, none of your operations contravened either by-laws or the Michigan statutes regarding savings and loan associations in 1952?

A. No.

Q. By examination of your by-laws and the statutes, you can determine the kind of activity you were engaged in and the purposes for which you were incorporated?

A. Yes.

* * * * *

Q. Now, as I understand your Association, as well as other (836) associations, have two types of members, is that true?

A. That is correct.

Q. You have what is referred to—would you describe those two types of members your Association has?

A. The savings customer purchases shares in the association. He becomes a member. And, the borrower likewise becomes a member when he takes out a loan.

Q. Is there any difference between these two types of membership?

A. Nothing.

Q. Does the savings member have any different voting rights or privileges than the borrowing member?

A. No.

Q. In other words, each would have one vote?

A. One vote per member.

Q. And each would be entitled, in reference to that vote, to participate equally in the management and operation of the savings and loan association?

A. Yes, he has the same vote, either one.

Q. As I understand it, your association, as these other associations, is purely mutual in character. Now, would you explain the nature of this mutuality, if you know?

(837) A. Well, to start out with, you need the savings customer, he comes first, because you have to have the funds, naturally, before you can make the loans; and the savings customer naturally participates in the dividends; he becomes a member the same as a borrower becomes a member as soon as he takes out a loan. They share equally at the annual meetings, voting, and one provides the income from which you pay the dividends, the savings customer.

* * * * *

(839) Q. As I understand it, you have members that are actually voting members of the association that are borrowers on an equal standing with members of the association that have savings accounts or are depositors or shareholders; is that correct?

A. Yes, sir.

Q. I am asking you how you really take into consideration and if you do take into consideration the interests of the borrowers as a member in the operations of your organization.

A. Well, we have at times reduced interest rates on mortgages regardless of the rate that the loan was negotiated on.

Q. In other words, there have been times where you have across the board reduced interest rates on outstanding mortgages for your borrower members?

A. That is correct.

Q. And was that done in 1952?

A. I don't recall any in '52, but it has been done in this present year and prior to '52.

* * * * *

(840) Q. * * * I am talking about mortgages that have already been outstanding. You understand that, don't you?

A. Yes, sir.

Q. Not the current mortgages that you are making, but you have reduced the interest rates across the board on outstanding mortgages at the time that action was taken?

(841) A. That is right.

Q. Will you explain why you took such action?

A. Well, of course, in some cases it was because we changed our current rate, so we went back and reduced the rate on some of the previous ones to the same rate as our current charge.

* * * * *

(842) Q. (By Mr. Dexter): Is there any distinction made at the annual meeting between a borrower and a saver member?

* * * * *

A. There is no difference.

* * * * *

(843) Q. Was any identification made in the year 1952 or years preceding that between a borrower member and a savings member at your annual meetings?

* * * * *

A. No, there was no identification in either of them.

* * * * *

Q. (By Mr. Dexter): At your annual meetings has there been any voting permitted by proxy?

A. No.

Q. That would include the year 1952 and the precedings years?

A. There are no proxies allowed.

Q. Now, as I understand it, you did not have much activity in FHA mortgages in 1952?

A. We had none.

Q. Do you know why you did not have?

A. Well, for one thing, it is because of the policy of the Board, (844) and that is because our conventional loan is much more favorable to the borrower.

Q. What do you mean by that?

A. Well, the terms. On our form of mortgage, he has no prepayment penalty. He also has the privilege of paying his account in advance. He can pay any amount he wishes. It doesn't have to be in multiples of the monthly payment.

You have a chance to deal with him at your own direction, rather than being told by the FHA how you should deal with your delinquencies. You have to report them under their rules, and he gets a lot better contract with a conventional mortgage.

Q. What was your policy in 1952 about delinquencies—that is, people that were delinquent on their mortgage?

A. So long as we felt they were doing the best they could, we just carried them along. Sometimes reduced the payment temporarily.

Q. And in reducing the payment, for example, did you rewrite the mortgage?

A. No.

Q. It wasn't a matter of refinancing, then?

A. No; no charges or expenses.

Q. So when you reduced the payment, you did not change the mortgage or the note?

A. That's right.

(845) Q. Do you go to the directors for approval of a reduction in payment?

A. No. The manager has that discretion, subject, of course, to the Board probably reviewing your actions.

Q. Would the overall reduction in interest of outstanding mortgages reduce your earnings?

A. Oh, yes.

Q. And would that reduce your ability to pay dividends on the share accounts?

A. Well, it probably would have some bearing on whether you could increase the dividend or not.

Q. It would actually decrease your earnings?

A. Absolutely.

Q. And you have to pay dividends to your share accounts out of earnings?

A. Yes, sir.

Q. And therefore, it would, as I understand it, decrease your ability to pay dividends?

A. Yes.

Q. In 1952 did you refinance FHA mortgages acquired elsewhere?

A. We could have. I wouldn't be sure.

Q. You don't know whether you did or not?

A. No. We did some refinancing, but I don't know whether—.

* * * * *

(846) Q. I would like to show you Exhibit 93 and ask you to identify it, please?

A. It is a specimen or a copy of the mortgage note that we used.

Q. Is that the copy of the mortgage note form that you used in 1952?

A. Yes, sir.

Q. You used that in all your conventional mortgages?

A. Conventional mortgages, yes.

Q. And did all of the mortgage notes then contain this paragraph that you had in 1952:

"In the event of advance payments, this note shall not be in default as long as the unpaid indebtedness is less than the amount that said indebtedness would have been had the monthly payments been made under the terms of this note."?

* * * * *

Mr. Dexter: * * *. I offer it * * *.

Mr. Van Zile: No objection.

The Court: Received.

Q. Will you answer the question?

A. It is a copy of the note we used on all conventional mortgages.

Q. The clause I read to you appeared in each one?

A. That's right.

(847) Q. How long did it take you in 1952 to close a conventional mortgage, approximately?

A. Oh, the average, a week.

Q. Well, do you know how long it normally took in '52 to close an FHA mortgage?

A. Probably four to six weeks.

* * * * *

Q. (By Mr. Dexter): What would your normal costs be in 1952 in regard to closing a conventional mortgage?

A. About $38, on the average.

* * * * *

Q. What would the $38 consist of?

A. Recording fees and attorney fees, examination of the title, (848) and appraisal.

* * * * *

The Court: How about the bringing down of the abstract?

A. That wouldn't be part of our cost. The borrower or purchaser probably would pay that. There would be an abstract billed, yes; that is not included.

The Court: This is the cost to you then?

A. That is right.

Q. What would be the cost to the member borrower?

A. Our cost would be about $38 to the borrower.

Q. I see. That would be a cost that you would have the borrower pay?

A. That is right.

Q. And that would be all his costs?

A. Yes.

Q. Except bringing down the abstract?

A. Posting the abstract, if it was his property, or he was acquiring it, the deed holder would.

Q. Then basically that would be all of his costs, the $38, between what you would pay and he would have to pay?

A. Well, that, of course, would be a little higher if it was a construction loan where we advance the money as the house (849) was being built; there would be an extra charge then, half of one per cent.

Q. You don't know what percentages of your business in 1952, your mortgage business, was construction loans?

A. No, I do not have—it is very high.

Q. What service did this charge for construction loans represent?

A. Well, it meant we would inspect the property probably every week, or sometimes every two weeks, depending on the progress; and we would see that all the bills were paid and take waiver of liens from them. Sometimes make direct disbursements to the sub-contractors.

Q. To check to see the borrower was protected?

A. That is right.

Q. If he had a contractor?

A. Another advantage of the commercial loan of your own—he doesn't have to have a contractor, if he wants to build a house through us he can act as his own contractor.

Q. You had many situations like that in 1952?

A. Oh, yes, sure.

* * * * *

(850) *Re-direct Examination*

By Mr. Van Zile:

Q. What was the rate of interest which you charged your mortgage borrowers in 1952?

(851) A. Five per cent on conventional.

* * * * *

Q. And what was the term?

A. Oh, it varied from ten to twenty years.

Q. What was the average?

A. The average would be about fourteen years.

* * * * *

Q. And are you familiar with what the interest charge was on FHA mortgages?

A. No.

Q. You don't know?

A. No.

Q. Do you know anything about the term of FHA mortgages?

A. I would say no, not exactly.

Q. I notice that you had V. A. mortgages?

A. That is right.

Q. What was the rate of interest on the V. A. mortgages?

A. Four per cent.

Q. And what was the term on V. A. mortgages?

A. Twenty years.

Q. And how long did it take to clear a V. A. mortgage?

(852) A. Three to four weeks.

Q. About the same time as an F. H. A.?

A. Right, about.

Q. Well, now, you have said, as I understand your replies to Mr. Dexter, that the conventional mortgage was a better contract than the F. H. A. mortgage, is that correct?

A. Yes.

Q. And you stated that your interest rate was five per cent, and you didn't know what the interest rate was on F. H. A.?

A. Right.

Q. Yes. Well, how can you say that it is a better contract without knowing what the interest rate was? Isn't that important to the borrower?

A. Yes.

Q. How about the V. A. mortgage; was that a better or a worse mortgage than your conventionals?

A. Well, it was made on the same form as the conventional mortgage.

Q. It was?

A. Except as to rate, yes.

Q. Well, then, there was no difference between the V. A. and the conventional, in your opinion?

A. Only as to rate.

Q. Only as to rate?

A. Yes.

(853) Q. Which was the better contract?

A. Both the same; they had the same privileges as a conventional.

Q. Although he paid a lower interest rate, that doesn't alter your opinion that they were about the same, is that right?

A. Well, if they get the same privileges.

Q. Is there any reason why, to your knowledge, that the Association had a policy against F. H. A. mortgages, but did take V. A. mortgages?

A. Probably some patriotism involved.

Q. Do you know?

A. Some patriotism involved, yes. We were anxious to help the G. I. We made the first G. I. loan in Flint. The Board felt that they should help the G. I.'s out.

Q. Well, you are not familiar with the purposes of the F. H. A. mortgage?

A. Well, some. As you probably know, if you make an F. H. A. mortgage they discount them anyway; you wind up the same place as if you are making a conventional mortgage; you make about the same return by discounting the F. H. A. mortgage when you make it.

Q. But nonetheless you didn't take any F. H. A. mortgages?

A. No. If we had, we would have discounted them the same as the others were doing, so they would average up with our conventional earnings; the earnings you make on the conventionals come out the same place.

(854) Q. But you don't know about the F. H. A. mortgages in detail?

A. I know how they made them, yes; I know they discounted them.

Q. Now, let's get back to this borrower-investor. An investor did not have to be a borrower, did he?

A. No.

Q. Nor did a borrower have to be an investor?

A. No.

Q. And if a man walked in your door he didn't have to be a member to apply for a loan, did he?

A. No.

Q. And how many votes, or what sort of a membership did he get when he borrowed money from you?

A. Well, when he became a member he had one vote.

Q. And how many votes did the investing member have?

A. One vote.

Q. For what—regardless of the size of his investment?

A. That is right.

Q. Just one vote?

A. That is right—or, regardless of the size of the loan, he had one vote.

Q. Have you any idea of your own knowledge what percentage of your members showed up to vote at your anuual meetings?

A. No, I haven't.

Q. What interest did the borrowing member have, if any, in your reserves and undivided profits—the borrowing member?

(855) A. I don't know.

Q. He didn't have any, did he?

A. Sure, he did.

Q. Did he receive any dividends?

A. No.

Q. When he paid up his loan did he get a part of that reserve and undivided profits, to your knowledge?

A. No.

Q. Did he have any obligation to the Association other than to pay the interest and principal on his mortgage?

A. Well, as long as he was a member he had some obligation.

Q. What obligations?

A. If he paid it up, naturally there was no further obligation.

Q. Did he have any obligations while he was in the process of paying, other than paying?

A. No.

Q. You have no idea, as I understand it, what percentage of your borrowing members were investors?

A. No, I don't.

Q. Now, subject to our objection, I would like to inquire as to this across-the-board-reduction in interest rates.

When did this occur, these reductions, in point of time, exactly when?

A. I couldn't give you the exact dates, except the recent one, which was in—

(856) Q. (Interposing): No, I am not interested in the recent one; I mean 1952 or prior thereto?

A. I couldn't give you the exact date.

Q. Well, how many were there?

A. I wouldn't know that either.

Q. Were there more than one?

A. Oh, yes.

Q. What years, do you remember?

A. No, I don't.

Q. Have any occurred since the war?

A. Since the last war?

Q. Yes, World War II?

A. Yes, this year.

Q. No, not this year, other than this year?

A. I think so, yes.

Q. You think so?

A. Prior to 1952, yes.

Q. Can you find out exactly when those occurred, and inform us?

A. I think so.

• • • • •

(857) Q. Did it have anything to do with the fact that interest rates generally were going down when those occasions happened?

A. Probably so.

Q. Probably. So that somebody else might have refinanced, is that right?

A. In some instances, probably could be.

(858) Q. Wouldn't that be the principal reason for such a reduction?

A. No.

Q. What other reason would there be?

A. Make a good customer out of the borrower. He comes back. It just isn't a one-time deal with the borrower. In his lifetime you get him back probably three times if you treat him right.

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(861) Q. Mr. Sibilsky, on your conventional mortgages could you tell us the average amount which you required to be required as a down payment in percentages of the total amount loaned?

A. Average would be about one-third.

Q. So that on a $12,000 mortgage, you would require $4,000 down payment, is that correct?

A. Well, on the average. In some cases, less than that.

Mr. Dexter: I assume, Mr. Van Zile, you meant valuation. You said $12,000 mortgage.

Q. (By Mr. Van Zile): I am talking about a $12,000 loan. Are we speaking of the same language?

A. You mean the loan or the value of $12,000? You pay a third down on a $12,000 valuation. Be $8,000.

Q. An $8,000 loan?

A. Mortgage.

Q. And you would require $3,000 down payment on the average?

A. Well, that would be 25 per cent. There are some who require $3,000. Some would be four. With this new construction, probably would be $3,000.

Q. When you said on the average one third, what were you speaking of in terms of one-third of what?

A. Of the appraisal.

Q. Of the appraised value?

A. Or purchase price.

Q. Now, on this reduction in interest rate on the mortgages, (862) Mr. Sibilsky, was that a reduction that took place in Flint alone?

A. No, it affected Detroit.

Q. And Hancock?

A. Yes.

Q. You are sure of that?

A. Quite sure.

Q. And when a borrowing member pays up his loan, his membership in the organization, as I understood you to say, ceases. Is that right?

A. Yes.

Q. I mean he is no longer a member?

A. No.

Q. In 1952 were you advertising for investors?

A. Yes.

Q. And you featured in those ads the rate of dividend, did you not?

Q. Probably, yes.

Q. And was that not a primary attraction for investors, the rate of dividend which you were paying currently?

A. That would be one.

Q. Well, isn't that the principal reason?

A. The rate, and the fact that it was insured, probably the two together.

Q. And have your dividend rates increased all the years?

(863) A. Yes.

Q. Now, so far as investors were concerned, you had many more investor shareholders than you did borrower shareholders, did you not?

A. I would say yes.

Q. About three times as many, did you not?

A. I couldn't say that for sure.

Q. What would you say?

A. I would say twice as many.

Q. And not all of your borrowing members were investors; isn't that so?

A. Yes.

Q. So that only a small percentage of your membership would be both investors and borrowers at the same time; isn't that true?

A. I would say yes.

* * * * *

(864) Q. * * * So far as you were concerned in your association, you were trying, were you not, to earn

as much as you could so that you could pay as high a rate of return on the investments as possible; is that not so?

A. That's generally true.

Q. That was an obligation that you felt you had to your shareholders; isn't that so?

A. Well, naturally you expect to pay them a fair return, and naturally you would have to earn it in order to attract a customer, a savings customer.

Q. Well, consistent with good business practice, what you were interested in was earning as much as you could so that you could pay them as much as you could; is that not right?

A. Well, not always.

Q. Are your dividends based on your earnings?

A. Yes.

Q. Now, what type of investors did you have, Mr. Sibilsky?

A. Well, installment savings and fully paid.

Q. Yes, but I mean by types, I mean did you have individuals investing with you?

A. Most of them would be individuals, yes.

Q. Corporations?

A. I don't believe any corporations.

Q. Partnerships?

A. Some partnerships.

(865) Q. Trusts?

A. Probably trusts, a few.

Q. Any other types?

A. Offhand I don't recall any. There were very few anyway, total.

Q. And those persons investing with you other than individuals would not be interested in borrowing money from your association, would they?

A. Probably not.

Re-cross Examination

By Mr. Dexter:

Q. When did you open your Flint office?

A. About 1915.

Q. And how long have you been in that office?

A. Since 1919.

Q. During the time that you were in the Flint office, has any member that has a share or savings account with you received anything besides the principal amount plus the dividends?

A. No.

Q. What was the reason, if you know, for the office being opened up in Flint?

A. Well, they received a request from the Chamber of Commerce (866) at that time to open an office in Flint, and they agreed to support the institution if we would open an office by subscribing for shares, and so on.

Q. And what was the particular situation in Flint that required the Chamber of Commerce to make that kind of an approach to you?

Mr. Van Zile: I will object to that question on the grounds of materiality.

* * * * *

The Court: You can make it on a separate record, if you wish.

* * * * *

Q. (By Mr. Dexter): Will you explain the purpose?

A. They needed housing. They were very short of housing, and the automobile industry was expanding. They were very badly in need of housing. That was the reason they asked us to come in and open an office.

(867) Q. In other words, to make available mortgage money?

A. Mortgage money for particularly new construction.

Q. And is that primarily the purpose for which you operated in Flint in 1952?

A. Oh, yes.

Q. That is to make available mortgage money?

A. To create new home owners.

Q. And don't you base your current dividend rate, and did in 1952, in order to get money that you might make mortgages for home ownership?

A. That is our source of income for making mortgages.

Q. Would you have any interest in getting any share of deposit account money over and above a mortgage demand?

A. No, not particularly, not in Flint.

Q. Your basic purpose then, as I understand it, when you came into Flint, in 1952, was to make available mortgage money?

A. That is correct.

Q. And has that always been your purpose?

A. Absolutely.

Q. And you would vary your current dividend in order that you might get money available to loan for mortgages?

A. That is correct too.

Q. Is that in accordance with the basic purpose of your institution?

A. Yes, sir.

(868) Q. Is that spelled out in your by-laws?

A. That is in the by-laws, yes, sir.

Q. Now, Mr. Van Zile asked you that if a borrower member paid off his indebtedness to your Association, that he was no longer a member. You meant no longer a borrower member, did you not?

A. That is right.

Q. That same individual could have been a savings member at the same time?

A. He could have been, yes; a lot of them do.

Q. Now, as I understand, your share accounts increased considerably in 1952, for example, over what it was previous to that time?

A. Yes.

Q. When you take in additional savings account money, what happens to the value of the surplus and reserve per dollar of investment? * * * Would it go up or would it go down?

A. It might go down in proportion to the amount of reserves or profit, if you increased your savings over a period of time.

Q. Does each depositor, or shareholder, or savings account person participate—pay any additional amount to become a member over and above the face amount of the certificate?

A. No.

(869) Q. Does he have the same interest as a member that had been there for twenty years, say?

A. Absolutely.

Q. And if this new member came in, then the surplus and reserve per dollar investment would be reduced at that particular time because of the additional investment?

A. To some extent.

Q. Now, the question was asked if you received trust deposit, and I think you said "Yes." By that did you mean the fiduciaries depositing trust funds with you?

A. Sometimes, yes, for minors.

Q. It wasn't a trust as such?

A. No.

Q. You have no Trust Department, or carry on trust activities?

A. No; or in relation of guardianship.

Q. Now, do borrower members become share account members, and vice versa? Is there a changing situation there continuously?

A. I don't quite get it.

Q. Well, in the history of your institution, prior to 1952, and up to 1952, do people that have been borrowing members become savings members?

A. Oh, yes.

Q. And people who have been savings members become borrowing members?

A. Surely.

(870) Q. And I assume from time to time that a certain percentage of them are both?

A. That is right.

Q. Now, during your employment with the Association in Flint, has there been any change in the nature of your Association, basic change in its purpose?

A. No change in the purpose.

Q. Do you conduct your business, or did you in 1952 in the same way as you did from the time the office was opened in Flint?

A. Certainly.

Q. You got money from the same class of people generally?

A. Same class.

Q. Did you place your mortgages generally with the same class of people in '52 as you did in the period of time prior to that time?

A. Yes.

Q. As I understand it, all your mortgages were on residential properties?

A. Yes.

Q. That was 100 per cent in '52?

A. Yes.

Q. As a manager, do you have any greater interest in the borrower or investor member?

A. I don't know how you could define it greater, but we have about the same interest in both. We need both of them. (871) We cater to the borrower because that means the business. The average borrower today probably will own three homes at least during his lifetime, or his children, so we cater to them.

Q. Is there any way that either the borrower or investor would stand to gain by growth in your institution in terms of size?

A. Well, just probably get a larger dividend.

Q. You mean size alone determines the amount of dividend, that is, whether you have got \$20,000,000 in accounts and \$20,000,000 in borrowed money or whether it is ten?

A. Well, I think as your institution grows, naturally your earnings grow in size.

* * * * *

Q. * * * In other words, what is the difference in an investor's position in your organization when it had investors in smaller number and invested moneys in smaller amount than it would be when both of those were greater?

A. Well, I would say years back he probably got a larger return on his investment than he has in late years.

Q. In other words, the expanding nature of the thing has decreased any interest (872) he might have in this surplus and reserve?

A. Yes.

Q. If, as an example, you had a depositor in 1919 when you opened your Flint office of $5,000, would his interest be any different in 1952 if he had left it there?

* * * * *

A. He received a greater return on his investment in 1919 percentagewise than he did in '52.

Q. * * *. He would participate in the same way, would he not?

A. Yes.

Q. In other words, if in 1952 he wanted—he could have been discontinued as a member, could he not?

A. Yes.

(873) Q. And if he had, he would have gotten back the principal amount he put in plus the dividends that have been paid?

A. Right.

Q. He would not have shared in anything else in the organization?

A. No.

Q. He would have been exactly the same type of person who made an investment in 1952?

A. That is right.

* * * * *

Re-direct Examination

By Mr. Van Zile:

Q. Now, you say that your business hasn't changed particularly since 1919 and 1952; is that correct?

A. Well, the method of operation hasn't changed.

Q. Your method of operation. You have testified that you dealt with all members of the public, as I understand it, both investors and borrowers, in 1952?

A. Yes.

Q. That was also true in 1915?

A. That's right.

Q. Did your borrower in 1952 have to subscribe for a certain number of shares in your organization?

(874) A. In '52, yes.

Q. How many shares did he have to subscribe for?

A. One share for each $100.

* * * * *

Q. * * * Your borrowing member?

A. Well, that was the basis on which we used to issue certificates, yes.

Q. In 1952?

A. No, no.

Q. Well, what was the situation in 1952 so far as the borrowing member was concerned?

A. He just became a member, that's all, without any particular—

Q. (Interposing): But in 1919 he had to subscribe for a certain number of shares, did he not?

A. I couldn't answer that.

Q. Have your dividend rates gone up from time to time, Mr. Sibilsky, since 1919, or what has been the situation?

A. They went down from—do you want the rates?

Q. Yes.

A. I think from five per cent down as low as two, and then back up to two and one-half and three.

Q. And the two per cent, I suppose, was during the depression years?

* * * * *

(875) A. Yes.

* * * * *

Q. Now, you say that you like to get the same customer back because he may buy three homes during his lifetime?

A. Yes.

* * * * *

Q. And I understand from what you testified to before that there were other institutions in Flint that were also in the home financing market?

A. That's right.

* * * * *

(876) Q. * * * What were the other institutions trying to do in that respect, Mr. Sibilsky, to your knowledge?

A. I presume they were advertising for mortgage loans, the same as we were.

* * * * *

(877) CLARK, ROBERT E., was thereupon called as a witness herein, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

* * * * *

Q. * * * What is your position with the Capitol, please?

A. I am an assistant treasurer.

Q. And you were here this morning when you were asked to obtain the amount of the personal property tax paid by the Capitol in (878) 1952 on its Lansing personal property?

A. Yes, sir.

Q. And do you have that figure?

A. Yes, sir.

Q. And what is it, sir?

A. $477.89.

* * * * *

ANDREWS, HAROLD M., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

* * * * *

Q. * * * You are connected with the Union Savings & Loan Association, Mr. Andrews?

A. Yes, sir.

Q. Now, would you speak up so the court and the stenographers can hear you, please?

A. Yes, sir.

Q. What is your position at the present time with the Union (879) Savings & Loan Association?

A. I am president.

Q. And how long have you been president, sir?

A. Since 1956.

Q. And what was your position before that, sir?

A. Executive vice-president and manager.

Q. How long did you have that position?

A. Since 1948.

Q. And were you with the Association prior to that time?

A. I joined the Association in 1921.

Q. And in your position from 1948 on, what were your basic duties?

A. Managing officer of the Association.

Q. And were you responsible primarily for the ultimate correctness, or for the books and records of the corporation?

A. To a certain extent, yes.

Q. The person who had immediate charge reported to you in that connection?

A. That is right.

Q. And subject to the Board of Directors, did you have anything to do with the formulation of policy from 1948 on?

A. I worked with the Board of Directors in formulating the policy.

Q. And then as general manager, and then later as president, you carried out those policies?

(880) A. That is right.

Q. Now, what is the area of the operation of the Union Savings & Loan?

A. As far as lending is concerned?

Q. Both; first lending.

A. Lending, we make loans in Ingham County, Clinton and Eaton; we are right in the corner of Ingham County, and we go up in the outlying area taking part of Clinton and Eaton counties.

Q. What is the area of your operations in respect to getting investment shares?

A. We have investment shares from all over.

Q. From all over the United States?

A. Yes, sir; we have had investors with us forty or fifty years.

Q. And they reside all over the United States?

A. Some of them, yes, sir.

Q. And is there any particular economic class you appeal to for getting your investors?

A. No; we advertise in the State Journal, and that goes to all people in the area; so we appeal through the newspapers.

Q. And in those advertisements, in 1952, did you mention anything about your dividend rates?

A. Not to my knowledge.

Q. Did you prior to that time?

A. Oh, we might have back in the early years when we were paying (881) five per cent, back before the depression, and we have recently again.

Q. What dividends did you pay in 1952?

A. Three per cent.

Q. What do you pay now—this is a separate record.

A. Pardon me. We paid three per cent until July of 1952, and in December, 1952, our Board voted to pay an extra half; or, we paid three and one-half, or one and three-quarters, for the last six months of 1952, and we continued that since then.

Q. Your rate was increased in the latter part of 1952 to a three and a half per cent annual rate?

A. That is right.

Q. And does the rate of dividends you paid shareholders depend upon the earnings of your corporation?

A. To some extent; to some extent. We have a very large surplus, reserve and undivided profits, and we are earning money on that money that we are not paying anything on.

Q. What dividend rates did you pay prior to 1952, say from 1945 on?

A. Well, we never paid less than three per cent at any time.

Q. At any time?

A. No, sir.

Q. And was it necessary for a person to be a member of your Association in 1952 prior to his becoming an investor in shares?

(882) Did he have to be a member before he came to you to become an investor?

A. The investor, no, he became a member at the time he made his investment.

Q. And did he get any vote when he became a member?

A. Yes.

Q. How many votes did he get for his investment?

A. He got one for each $100, not to exceed twenty votes.

Q. Was there any ceiling in 1952 on the amount of investment you would permit a person to make?

A. Yes, sir.

Q. What was the ceiling?

A. Well, I cannot exactly tell you, but if you will just let me refer to my statement of 1952—

Q. (Interposing): You do that, sir?

A. In our December public statement that we made out to all our investors at the end of December, 1952, we say, "Your Board of Directros voted an extra dividend of a half of one per cent,"—which I have already mentioned—"and the Board of Directors has now released restrictions on investments so far as our shareholders are concerned."

That is, in other words, we were taking the money then from our existing shareholders rather than trying to go out and get new members, new money in. Prior to that time we were restricting our investors.

(883) Q. Then in 1952 you put the restriction off?

A. That is right.

Q. And you also got new members at that time, too, didn't you?

A. Oh, some, yes.

Q. And there were no restrictions on the new members?

A. Oh, yes, we won't take any hundred thousand dollars or anything like that. Somebody comes in with twenty, twenty-five thousand dollars, I want to know who they are and how long we can leave it there.

Q. You are interested in long-term investment?

A. That is right.

Q. And did you have any corporate investor?

A Oh, we might have had one or two.

Q. And any trustees?

A. Just some small amounts through the trust company where most of that money had been invested in our association when the person deceased, and according to the terms of the will the trust company was named administrator and they left the funds with us.

Q. They continued as trustee?

A. That is right.

Q. And they continued their investment?

A. That is right.

Q. And did you have any partnerships?

A. Not that I know of.

(884) Q. Any educational institutions?

A. At one time we had about $6,500 from the School District of the City of Holland, and not being an insured association, they changed the law, and they withdrew their money. Whether that was '52, I couldn't answer.

Q. And you say you had investors from all over the United States?

A. Yes, sir.

* * * * *

Q. Were the investors from outside of Ingham County, did they become borrowers on mortgage loans from your institution?

A. Not if they were outside Ingham County, they couldn't. We were just loaning that area.

Q. And did many of your investors in number or dollar-wise become mortgage borrowers from your association?

A. Some of them did, yes.

Q. Were there any?

* * * * *

(885) A. There were some investors, yes, that became borrowers. Percentage-wise I couldn't tell you.

Q. Isn't the percentage small, sir?

A. Well, yes, I would say.

Q. Now, was it necessary for a borrower, a mortgage borrower to be a member prior to his taking the mortgage?

A. No.

Q. And was it necessary for a borrower to be an investor?

A. No.

Q. And was it necessary for an investor to be a borrower?

A. Not necessarily.

Q. And is your association interested in increasing its investor shares, number of investors and the dollars invested with you?

A. We haven't been too anxious to grow. We haven't gone out and advertised too strongly.

Q. But you have grown, haven't you?

A. We have grown. A normal growth, I would say.

Q. How much have you grown from the period of 1948 to 1952, would you say percentage-wise?

A. In 1956 we took over the Lansing Savings and Loan with assets of about two million dollars. Our assets at the end of '48 (886) or '52 were around five million, as I recall it.

Q. I am talking about between '48 and '52 now.

A. I thought this was '52.

Q. I am starting in '48 and going to '52. Do you know how much you grew in deposits during that period?

A. Yes.

Q. Very good, sir.

A. You want to remember, as I stated before, that the period from '48 to '52 our investments were restricted. At the end of December 1948 our share liability was around four million dollars. Now you want what it was in '52?

Q. Yes, sir.

A. In '52 they were about four million three hundred thousand.

Q. And what have they been since that time?

Mr. Dexter: You Honor, I object to that.

Mr. Klein: Separate record.

The Court: Separate record.

A. You mean up to—

Q. As of the present time.

A. They were around 8 million dollars, I think.

Q. What rights did a person who was a borrower have as a member when he became a member at the time of borrowing?

A. He had voting power of one share.

Q. And did he have any other rights or obligations in respect to his share?

(887) A. No.

Q. He didn't have to pay for that share, did he?

A. No, sir.

Q. And when his loan was paid up, did his membership cease?

A. If he had no other investment. You are talking about the borrower share?

Q. Yes.

A. Yes, it did.

Q. It ceased. When a person came to make a mortgage loan, you have an application form for him, do you not?

A. Yes, sir.

Q. And do you also make an appraisal of the property?

A. Yes, sir.

Q. And does the form require financial statements as to his income and net worth?

A. On the back of the application there is a form.

Q. And on what basis did you base your mortgage loans in 1952?

A. On the appraised value of the property and the man's ability to pay.

Q. And what ratio of mortgage would you make to appraised value?

A. Practically two-thirds.

Q. What types of mortgages did you make in '52?

A. Conventional loans mostly.

Q. And what rate of interest did you charge in 1952?

(888) A. Majority were 5% usually; probably had a very, very small percentage of 6%,

Q. And did you take FHA loans?

A. No.

Q. Did you take veterans' loans?

A. Yes, we made a few in 1952.

Q. And did you know in 1952 that the FHA loans were for a longer duration than most conventional loans?

A. I never made any FHA loans of any shape or manner, and I have only the information that I would get from the outside.

(889) Q. Being in the mortgage business, did you familiarize yourself with the terms of FHA mortgage loans in 1952?

A. May I answer that and take a little time?

Q. Certainly. Take as long as you like, sir.

A. In 1950, I think it was, a gentleman called on me from Cleveland representing the FHA, and he said we hadn't qualified with the FHA. He said he would send me some information.

About six months later he came back and I asked the same question, why we hadn't received it. He promised to send me some information.

Two years ago a man came in from Grand Rapids and asked me the same question. Up until now, I have never received anything from the FHA, so as far as the FHA is concerned, I am not interested. I never have been. I might be interested at some future date, but I am not now.

Q. Do you know the interest rates that were being paid on FHA loans in 1952?

A. Only by hearsay, what I have heard here.

Q. Being in business, weren't you interested in knowing what the Government had made possible for mortgage borrowers in 1952?

A. I was interested in what they were making possible for the borrowers, but also was interested in making loans to our own borrowers.

Q. Did you find out at what rate the FHA mortgages could be made in '52 because of your interest in home building?

(890) A. I was interested.

Q. Well, did you find out what the rates were, sir?

A. I don't know what the rate was. It might have been four-and-a-quarter plus a half, or four-and-a-half plus a half. I don't recall what it was in '52.

Q. What was the rate on G.I. loans in 1952?

A. Four per cent.

Q. And what was the term of mortgage?

A. Well, they would vary.

Q. In G. I. I am talking about.

A. Yes. We made them on our own form and we varied the term of the loan to the ability of the borrower to pay.

Q. What was it as a rule—twenty years?

A. Oh, no. Around twelve to fifteen years.

Q. Even on G.I. loans?

A. Yes.

Q. They were permitted up to twenty-five years; you knew that, didn't you?

A. It could have been, yes.

Q. But you didn't make any long-term G.I. loans?

A. I wasn't interested in long-term loans at the time.

Q. What was the average term of your loan, sir, in 1952?

A. Oh, I would say about thirteen years.

Q. About thirteen years?

A. Most of them were made on an eleven-year basis and some were (891) made on a fifteen or eighteen year basis.

Q. You say most were made on an eleven-year basis and some at higher?

A. That's right.

Q. And the purpose of your loans, were there some for construction purposes?

A. Yes.

Q. Some for buying existing homes?

A. That's right.

Q. And then there were some for other purposes, weren't there?

A. That's right.

Q. And what were these other purposes?

A. Well, I don't know. I think in the early part of 1952, if I recall it right, there were some regulations that restricted our lending. I think Regulation X or one of those regulations were in effect at that time. We had to go at a put per cent and they had to stay at a put per cent.

When that was released, I couldn't tell you, but if a man had the property and he wanted to borrow some money, we didn't care what the purpose was as long as we were complying with the regulations, because there was very few made on that basis.

Q. Were the other purposes for financing an automobile?

A. I doubt if there were very many made.

Q. But there were some?

(892) A. There could have been. I don't know.

Q. And for other household expenses or other expenses of the borrower other than building a house?

Mr. Dexter: Your Honor, I believe the witness says that he doesn't know.

A. Mr. Klein, let me answer this question. You talk about loans for all other purposes. Now, we made 291 loans during the year 1952, and there were only 33 out of that 291, for a total of $67,000, that were made for other purposes.

Now, I would say that was a very small percentage, when our total lending was a million 600 thousand.

Q. (By Mr. Klein): Did you make any commerical loans at all in 1952? On commercial properties, I mean.

A. Not that I know of.

Q. Do you know what the average size of your loan was that you made in '52?

A. I know we made 291 loans for a total of a million 622 thousand. Divide that out and figure it out.

Q. Do you know—

A. (Interposing): I haven't done it, no. I don't think I have.

Q. We can get it.

What other institutions were loaning money secured by mortgages on homes in the Lansing area in 1952?

A. Well, the banks, the Michigan National, the American State, the Bank of Lansing, Metropolitan, Prudential and Equitable (893) would be the main lenders, I would say.

Q. Were they making loans secured by the same type of property as you were making loans on?

A. Yes.

Q. In the same area?

A. I would say so.

Q. Did your institution refinance any loans that the Michigan National Bank had in 1952?

A. I would say for the record that we probably took one loan from the Michigan National as against fifteen they took from us during 1952.

Q. So there was some refinancing of property both ways?

A. That's right, but mostly on their part.

Q. Do you know whether or not your Association paid any personal property taxes in 1952?

A. Yes.

Q. Do you have the amount that was paid, sir?

A. (Documents handed to Mr. Klein by the witness.) You are talking about personal property?

Q. Personal property. According to this, you paid tax on an assessed valuation of $1,900?

A. That's right.

Q. What was that on?

A. On our furniture and fixtures.

Q. And the total tax, then, amounted to approximately $72.87?

(894) A. Whatever the total of those two.

Q. That is the total, sir. Is that correct?

A. That's what we paid right here.

Q. Yes, and did your Association pay an intangibles tax?

A. Yes, sir.

Q. At what rate?

A. The rate required by law,

Q. That is 40 cents a thousand on your shares?

A. That is right.

Q. And did you pay an annual privilege tax to the Secretary of State in 1952?

A. Yes, on the same—

Q. (Interposing): At what rate?

A. At the rate required by law,

Q. Well, was that a quarter of a mill?

A. Whatever it was in 1952; I would say it was; I don't know.

Q. That is what the Secretary of State has testified to?

A. Well, the Secretary of State is the one that collects it.

Q. Right. And you also paid a real estate ad valorem tax on your real estate?

A. Yes, sir.

Q. Now, did you bring with you, Mr. Andrews, pursuant to subpoena, a form of certificate showing the ownership in shares in 1952?

A. Mr. Klein, as I mentioned before—

(895) Q. Yes.

A. —in 1956 we took over the Lansing Savings and Loan, and we changed our name from the Union Building & Loan Association, Limited, to the Union Savings & Loan.

Q. Yes.

A. And for that reason we destroyed all our old certificates, and had to get new ones on the form on the new name. I have gone through our files and have picked three certificates of the various types that we issued in 1952.

Q. Very good, sir.

A. But for our records, we would like those back because those were taken out of our file; we had no blank ones.

Q. Would you object to the stenographer photostating them and mailing them to you directly?

A. I would be glad to.

* * * * *

Q. * * * I show you Exhibits which have been marked Exhibits 94-A, B and C, and ask you if they are the form of certificates evidencing ownership of shares of the three types of shares issued by your Association in 1952?

A. Yes, sir.

(896) Q. One, I see, is for installment savings?

A. That is right.

Q. That is 94-C; 94-B is what?

A. That is fully-paid.

Q. And 94-A is what?

A. Advanced-paid.

Q. What do you mean by "advanced-paid"?

A. They pay eighty and leave the dividends accumulate until there was a hundred. In this case there was a hundred, and when that matures to one hundred and twenty-five—

Q. And the 94-B is fully-paid?

A. Pay the cash dividends on it.

Q. And the 94-C is a payment on installments?

A. Weekly.

Q. Is that optional, the 94-C, they can pay or not?

A. No, that is installment savers.

Q. They are committed to pay.

Mr. Klein: I would like to offer Exhibits 94-A, B and C in evidence.

* * * * *

Mr. Dexter: No objection, except the continuing one of materiality.

The Court: Received.

Q. Do you have with you the Articles of Association and By-laws that were in effect in 1952, sir?

A. I have the original Articles, Mr. Klein, and, of course, (897) there have been a lot of amendments and changes.

Q. The ones that were in effect in 1952 I am talking about?

A. Well, we re-incorporated twice since this, but those are the original Articles.

Q. There are the original, but do you have the present ones?

A. The present ones?

Q. The ones that are in effect—

A. (Interposing): The ones that are in effect now are entirely new, because we changed them in 1957; 1956 would be the ones that we re-incorporated, probably, in 1946, with the amendments thereto.

Q. Do you have that?

A. I don't have them with me, no.

* * * * *

(898) Q. * * * Do you have with you a form of application for loan that was used by your Association in 1952?

A. Well, there (indicating) is one. I am sure I have a blank one (handing document to Mr. Klein).

Q. That is all right.

A. That I brought along on account of having a regulation in there that apparently was in effect in 1952. It might have some bearing.

Q. Well, this is one separate right here (indicating), isn't it?

A. That is right, that is it right there (indicating).

* * * * *

(899) Q. * * * You have handed me a document, which is a blank document, which has now been marked Exhibit 96, and I ask you whether or not that is the form of application for real estate loan used by your Association in 1952?

A. Yes, sir.

Q. On the reverse side there is a space for the financial statement and income of the prospective borrower?

A. That is right.

Mr. Klein: I would like to offer Exhibit 96 in evidence.

Mr. Dexter: No objection, except the continuing one as to materiality.

The Court: Received.

Q. (By Mr. Klein, continuing) I will show you a photostatic copy of an exhibit that has been marked 36-D, which has the heading "Building and Loan Division, Monthly Report, Union Building and Loan Association, December 31, 1952."

A. Yes, one of our reports, I am sure.

Q. I will ask you if that is a report which you filed with the Secretary of State of the State of Michigan?

A. Yes, sir.

(900) Q. And was that report prepared in the regular course of business, and was it pursuant to the regular course of business that it was prepared and filed with the Secretary of State?

A. Yes, sir.

Q. And do the figures in there correctly reflect the figures from the books and records of your Association for that period?

A. To the best of my knowledge and belief, yes, sir.

* * * * *

Q. I will show you Exhibit 37-K, and 37-K-1, and ask you if that signature appearing on each one of those exhibits is your signature?

A. Yes, sir.

Q. In one case it is signed as President, and in 37-K-1 as Vice-President, is that correct, sir?

A. That (indicating) is Mr. Anderson's.

Q. You are signing as secretary and treasurer?

A. No, sir, as vice-president; he just scrolled through there.

Q. Vice-president in both cases?

A. That is right.

Q. And you swore to those reports, did you?

A. That is right.

Q. And are they photostatic copies of the reports filed by your Association, the annual reports filed with the Secretary (901) of State for the respective periods of June 30, 1952, and June 30, 1953, respectively?

A. As far as I know, they are; they have our signatures.

Q. And do they correctly reflect the records of your corporation as at the period in question?

A. Yes, sir.

Q. And were they made up and prepared and filed in the regular course of business of your Association?

A. Yes, sir.

Q. And they were required by law to be filed, were they not?

A. That is right.

* * * * *

Cross Examination

By Mr. Dexter:

Q. You were asked some questions, Mr. Andrews, in regard to the number of investor members that were also borrower members, but you have no specific knowledge of that as to 1952, have you?

A. No, I haven't.

(902) Q. I think you also testified in the separate record for the period subsequent to 1952 that your assets were currently 8 million dollars. Was that a result of any merger that took place between—

A. (Interposing): Part of it was. You are talking about our assets as of now?

Q. Yes, as of now or as of the period that you testified as in reference to the 8 million dollar figure. That was the current figure.

A. The 8 million dollar share liability, that included the merger figure of the Lansing Savings & Loan.

Q. So that the predecessor association did not grow from 4 million 300 thousand in '52 to 8 million currently?

A. No.

Q. That would include the assets of the merger?

A. The assets of the Lansing were just a little under 2 million when I took over.

Q. That 8 million dollars, then, is the two associations after their merger?

Mr. Klein: You say they had a share liability of 2 million dollars?

A. No, I said their total. They had a share liability of probably a million and a half, something like that.

Mr. Klein: And the aggregate now is 8 million?

A. That is right.

(903) Q. Do you know whether or not your so-called other purpose loans included refinancing?

A. Refinancing of loans?

Q. Yes, would you put that under other purpose?

A. I think we might have had some in there. Just a minute, I will look at our schedule here. We take this off of our monthly statement reports. Financing of homes—

Q. (Interposing): I mean refinancing your own loans.

A. Part of that is in there.

Q. Do you know how much of that would be of that character?

A. No. There isn't very much to it. The total of the loans for all other purposes were only 67 thousand 200, for all other purposes, 33 of them, so they are small amounts.

Q. Do you have any priority for purposes for which you loan money?

A. What do you mean, Mr. Dexter?

Q. I mean would you loan money for home loan purposes over any other type of loan, thinking in terms of these other purpose loans?

Q. You mean if someone came in who wanted to borrow some money for other than to purchase a home or build a home?

Q. Somebody at the same time wanted some money to buy or build a home, is there any system of priority in your association in regard to what you will loan money for?

A. We like to make construction loans.

Q. That is home mortgages?

(904) A. Home mortgages, yes.

Q. You would prefer that kind of loan?

A. Oh, yes.

Q. Do you count as a new loan money you get on refinancing a current mortgage loan that you have? Is that considered a new loan?

A. No.

Q. As I understand it, you have been in the association since 1921; is that true?

A. Yes, sir.

Q. That is the present association or its corporate predecessors?

A. Yes, sir.

Q. To your knowledge has the character of that institution changed any from that time on down to 1952?

A. Not to any great extent, no.

Q. And the things that your association does are those authorized by law and by the association by-laws and articles of incorporation?

A. That is right.

Q. You engage in no other activity but the mortgage business of what you have testified; is that true?

A. That is right. In other words, we have no safe deposit box or money orders or things of that nature. We just have investment shares and make our mortgage loans. We do not go into any other field.

(905) Q. And this is spelled out in your by-laws, is it not, what you do?

A. Yes.

• • • • •

Re-direct Examination

By Mr. Klein:

Q. When you made loans for other purposes, you still took mortgages on homes, didn't you, to secure your loan?

A. We had to. That is the only way we could make them according to law.

Q. That is your business, to make mortgages secured by real estate?

A. That is right. We could only make two types of loans, either on our shares or on a first mortgage. That is all you could do.

• • • • •

Mr. Klein: Your, Honor, at this time I should like to offer as Exhibit 97 the certified copy of the articles of association and the by-laws of the Saginaw Building and Loan Association from January 17, 1888 down to the date certified, June 6, 1958.

These are certified by the office of the Department (960) of State. We thought is would be interesting to have a complete set of such articles and by-laws with all amendments in the record to show the changes that have been made in associations of this kind.

• • • • •

The Court: * * * It is received conditionally. Unless there is some objection later on, it is understood it is received.

• • • • •

(908) FAIRLES, RUSSELL, was thereupon called as a witness on behalf of the plaintiff, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

• • • • •

Q. Are you connected with the Michigan National Bank, the plaintiff in this case?

A. I am.

Q. And what is your position with the Michigan National Bank?

A. Vice president.

(908½) Q. And what are your responsibilities in that connection, sir?

A. Responsible for general operations.

(909) Q. Are you in any wise responsible for the accounting reports and records of the bank?

A. Yes, sir.

Q. And does that include only the administrative office, or does that include the seven offices?

A. Seven offices.

Q. And where does the Michigan National Bank have offices, sir?

A. Battle Creek, Flint, Grand Rapids, Lansing, Marshall, Port Huron and Saginaw.

Q. And how long have you been connected with the Michigan National Bank, sir?

A. Since it became Michigan National Bank.

Q. And when was that, sir?

A. January 1, 1941.

Q. Were you connected with any banks before that?
A. Yes, sir.
Q. What banks were you connected with, sir?
A. Immediately prior to that, the First National Bank and Trust Company of Grand Rapids.
Q. And then before that, sir?
A. The National Bank of Grand Rapids.
Q. And then before that, sir?
A. The Grand Rapids National Bank.
Q. And then?
A. The Bank of Detroit.
(910) Q. So you have been in the banking business a long time?
A. Since 1920.
Q. Do you attend Board of Directors' meetings of the Michigan National Bank?
A. I do.
Q. And how long have you attended those meetings?
A. Since about 1948.
Q. Are you on the Executive Committee of the Michigan National Bank?
A. I am.
Q. And are there other operating officers on that committee?
A. There are.

Mr. Klein: Mr. Van Coevering, do you have with you copies of the Michigan Department of Revenue intangibles Tax Return of the Michigan National Bank? There were two of them, I believe, one before the law was amended and one after, and if you have, I wonder if the Court would ask Mr. Van Coevering to produce them. I think he feels there should be a direction of production.

* * * * *

(911) The Court: * * * The Department will produce the records.

* * * * *

(912) Mr. Klein: * * * I have had this folder marked Exhibit 1. It contains the initial return of the Michigan National Bank under the law before it was amended—that is, for 1952—and it bears the stamp mark of May 28, 1953, I believe.

Then there is a departmental form showing payment by the bank.

Then there is a letter dated May 20, 1953 from the Department of Revenue, Louis M. Nims, Commissioner, to the Michigan National Bank, increasing the assessment for intangibles tax pursuant to the amended statute, showing a then deficiency of $49,929.27. The figures will speak for themselves, of course.

Then there is a ledger sheet of the Department of Revenue, showing that amount of tax claimed to be due.

There is a letter from Clarence W. Lock, Deputy Commissioner, to the Michigan National Bank, of a hearing on the proposed assessment and the determination by him of the additional assessment.

Then there is a letter from the Michigan National (913) Bank, dated November 10, 1953, to the Department of Revenue, making the payment under protest, and the ~~next~~ sheet is from the Department of Revenue, showing receipt of payment, and a new return on the basis of the new law, all of which was made under protest, showing the additional tax as assessed, and then the receipt by the Department of Revenue of the deficiency.

I would like to offer this all as Exhibit 1.

* * * * *

Mr. Dexter: No objection.

The Court: Received.

* * * * *

Q. (By Mr. Klein): Mr. Fairles, did the Michigan National Bank make a report to the Controller of the Currency of the Federal Government for the period of December 31, 1952?

A. They did.

Q. The Michigan National Bank, I take it, is a national banking association?

A. It is.

Q. And it was incorporated under the national banking laws?

A. It was.

(914) Q. And operates under the national banking laws?

A. It does.

Q. Do you have a copy of the report which you prepared for the Controller of Currency for the period ended December 31, 1952?

A. I have.

Q. And was that report made in the regular course of the bank's business and was it the regular part of business to make such reports and file the same with the Controller of Currency?

A. It was.

Q. Was it required so to do by statute?

A. It is.

Q. And do the figures contained in that report, or the copy which you hold, truly and correctly reflect the condition of the bank as set forth in that report?

A. They do.

* * * * *

(915) Mr. Klein: I should like to offer Exhibit 3, which is a report of condition of the Michigan National Bank at the close of business December 31, 1952, to the Controller of Currency of the Treasury Department, on Form No. 2130-A, Call No. 404.

Mr. Dexter: I object to it, your Honor, as not the best evidence.

* * * * *

(916) The Court: So that will be my present ruling. You will have a chance later to show me I am wrong, if counsel, before he gets through, indicates that he wants us to make it, but at the same time they may be received conditionally at this time, subject to the further rights on the part of the (917) State.

Q. (By Mr. Klein): * * * Referring to Exhibit 3, Mr. Fairles, I see on the reverse side of the report, that is, the back page, a Schedule A, under the heading of "Loans and Discounts." Is that correct, sir?

A. Yes, sir.

Q. And under Item 6 of Schedule A, there are tabulated various types of real estate loans, is that correct?

A. That is correct.

Q. And that includes farm loans, residential loans other than farms; then there is a breakdown of FHA, VA and not insured or guaranteed by FHA or VA, and then there is real estate loans secured by other preperties.

What is the aggregate of that Item 6, as I have related it?

A. The aggregate totals about $62,000,000.

Q. And what were your total loans of all kinds, including those mortgage loans, as at December 31, 1952?

A. $148,304,000.

Q. And that is before reserve for bad debts, and so forth?

A. Yes, sir.

Q. What percentage then was the real estate loans of all kinds to your total loans and discounts as at December 31, 1952?

A. Forty-two per cent.

(918) Q. And of the loans made on residential properties, what was the aggregate of those loans outstanding as at December 31, 1952?

A. Eighty-three per cent.

Q. Or, how much in dollars—that is eighty-three per cent of what?

A. Eighty-three per cent of the mortgage loans were residential, secured by residences; and they totaled $51,419,000.

Q. That is loans secured by mortgages on residential properties?

A. That is right.

Q. And what per cent of the total loans and discounts were your mortgage loans secured by residential properties?

A. 40 per cent.

Q. Now, I see in Schedule A, under Item 7-C, a classification of Repair and Modernization Installment Loans, of some $8,317,000, and ask you the nature of that item?

A. They are loans that are not secured; they represent improvements to property.

Q. Real estate, on residences, or otherwise?

A. That is right.

Q. On residences?

A. Mostly residences.

Q. Mostly residences. So if you are to add that $8,300,000 to the other mortgage loans on residences, that would give you a total of about $59,736,000 of

mortgage loans, plus modernization and repair loans, for residential properties?

(919) A. Yes, sir.

Q. And that is what per cent of your total outstanding loans and discounts as at 12/31/52?

A. 40 per cent.

Q. Well, now, you said something about a forty per cent figure before: Was that with or without that eight million?

A. It is without the eight million, it is thirty-five per cent.

Q. I see, and with the eight million modernization loan, it becomes 40 per cent of the total loans and discounts outstanding as of 12/31/52?

A. Yes, sir.

Mr. Dexter: I believe, your Honor, that these figures can more or less speak for themselves, and that the witness has already testified that this repair and modernization installment loans is not all residential. Now, if it is to be reliable, certainly that figure has got to be broken down.

Mr. Klein: * * * Was that residential primarily or not?

A. Primarily residential.

Q. What percentage would you say?

A. I would say about ninety-eight per cent.

Q. About ninety-eight percent of that eight million is for repair and modernization of residences?

A. Yes, sir.

(920) Q. Would you say that that amount of mortgage loan and modernization loans at that period in 1952 constituted a substantial part of your business?

A. Yes, sir.

Q. Well, looking on the front side of Exhibit 3, I see you indicate total assets of some $305,800,000 for that period, is that correct, sir?

A. Yes, sir.

Q. Now, the other assets appear to be primarily cash of $46,000,000, in round figures, and $107,000,000 in Government bonds, is that correct?

A. Yes, sir.

Q. And the rest is bank premises owned, and fixtures, and an item of "Other assets"?

A. Yes, sir.

Q. So what is the primary business of the bank?

* * * * *

(921) A. Receive deposits and make loans.

Q. * * * And in 1952 did you endeavor to increase the deposits of the bank?

A. We did.

Q. And did you or did you not endeavor to make as many good loans as you could, in 1952?

A. We did.

Q. In 1952 had you exhausted all available funds of the bank for mortgage loan purposes?

A. No, sir.

Q. Did you have substantial resources available for additional mortgage loans in 1952?

A. We did.

* * * * *

(922) Q. Referring to Schedule A on the reverse side of Exhibit 3, I see under item 6-B a classification, "Federal Housing Administration Loans," $26,944,-797.52.

Under 6-B2 "Veteran's Administration Loans" of $9,289,591.61.

And item 3, "Not insured or guaranteed by FHA or VA"—would that be your regular loan?

A. Conventional.

Q. $10,209,699.79. That is correct, isn't it?

A. That is right.

Q. Now, does that represent the unpaid principal balance as at that date?

A. It does.

Q. Of each class of loan?

A. Yes, sir.

Q. Now, I will show you a volume which has been marked—

I misspoke myself when I said 10 million. Would you strike that figure, please. It is $15,185,470.71 conventional mortgages. I had previously said 10 million. I read the wrong figure on residential conventional mortgages.

A. Apparently I must have been looking at the one you pointed at.

Q. And I read the wrong one. Now, I will show you an exhibit which has been marked Exhibit 4-A and ask you what that is.

A. This is a comparative statement of condition of the Michigan (923) National Bank showing—

Q. (Interposing): As of what date?

A. Showing assets and liabilities as of December 31, 1952, as compared with December 31, 1951.

Q. And what are—

A. (Interposing): The same type of information for the Battle Creek office and each of the other offices in Flint, Grand Rapids, Marshall, Port Huron and Saginaw.

Q. For the same period?

A. For the same period.

Q. And were these figures and these statements prepared in the regular course of business?

A. They were.

Q. Did they come to your offce as part of the regular course of business?

A. They did.

Q. And where did they go from there in the regular course of business?

A. As a report to the Board of Directors at their regular meeting the second Friday of each month. This one would be the second Friday in January.

Q. Following the year end—

A. Of 1953.

Q. And do you have the regular bound volume of reports submitted to the Board of Directors from which these were copied?

(924). A. I do.

Q. And are they here in court?

A. They are.

Q. And are they available for Mr. Dexter's examination?

A. They are.

Q. Are these reports made on a monthly or any other type of basis?

A. Monthly.

Mr. Klein: I should like to offer Exhibit 4-A, consisting of 8 separate statements as described by Mr. Fairles, and the originals are here for comparison by Mr. Dexter.

Mr. Dexter: Same objection, your Honor, as to Exhibit No. 3.

• • • • •

(930) The Court: My own ruling will be that the counsel have the right to have the books marked, the right to examine them, the right to cross-examine him.

They may be received tentatively or conditionally here for the purpose of examining the witness, if you wish, but they are all subject to the condition if counsel wishes the books produced, they will have to be produced. That is my present ruling, and they have a right to examine them.

* * * * *

Q. (By Mr. Klein): I will show you Exhibit 4-B and ask you what it is?

A. It is the consolidated activity report showing the number of borrowers, the number of depositors, the number of safe deposit boxes rented, vacant and delinquent, the number of officers and employees for the year December 31, 1952. This is as of (931) the close of business December 31, 1952, as compared with the close of business December 31, 1951.

Q. And attached to that is what, sir?

A. The same information for each of the individual offices in Battle Creek, Flint, Grand Rapids, Lansing, Marshall, Port Huron and Saginaw.

Q. And is Exhibit 4-B a photostatic copy of a report sent to you and in turn submitted to the regular meeting of the board of directors?

A. It is.

Q. Is that prepared each and every month?

A. It is.

Q. Is it prepared in the regular course of business?

A. It is.

Q. And is it the regular course of business to prepare and submit such reports to the Board of Directors for their consideration?

A. It is.

Q. And it is submitted to them how long after the end of each month?

A. At the Board of Directors meeting the second Friday of each and every month.

Q. And this activity report dated 12-31-52 covers what period?

A. It is as of that date.

Q. As of that date. And do you have the original report as made to the directors here in the courtroom for examination by Mr. (932) Dexter?

A. I do.

Mr. Klein: I should like to offer Exhibit 4-B in evidence, sir (handing exhibit to Mr. Dexter).

Mr. Dexter: Same objection, your Honor, as to 4-A.

The Court: Same ruling.

(933) Q. I will show you, Mr. Fairles, Exhibit 4-C, and ask you what that is?

A. 4-C is a consolidated report of loans made and paid for the month of December, 1952, showing the balance at the start of the period, the new loans made during the month.

Q. Of December?

A. Of December, 1952; the principal payments for December, 1952, and the outstanding unpaid balance as of December 31, 1952; and also the year to-date figures, showing the starting outstanding balance for December 31, 1951, new loans made during 1952, principal payments made during 1952, and the balance as of the close of the period December 31, 1952, broken down as to general loans, FHA mortgages, GI mortgages, other mortgages, and installment loans.

Q. And there are similar reports for each of the offices of the bank for the same period.

A. There is.

Q. And were these reports prepared in the regular and ordinary course of the business of the bank?

A. They were.

Q. And was it the regular and ordinary course of the business of the bank and its officers to prepare these reports and submit them to the Board of Directors for their consideration?

A. It was.

Q. And was it done monthly, or when?

(934) A. Monthly.

Q. And how soon after the end of the period were these reports given to the Board?

A. The second Friday of the following month.

Q. And were they prepared from the books and records of the bank in the regular course of business?

A. They were.

Q. And do they correctly reflect—

A. They do.

Q. —the transactions there?

A. They do.

Mr. Klein: I would like to offer Exhibit 4-C in evidence.

* * * * *

Mr. Dexter: Same objection as to Exhibit 4-C that we made as to 4-B and 4-A.

The Court: Same ruling.

(935) Q. * * * I will show you Exhibit 4-D, and ask you what it is?

A. It is the outstanding unpaid balance of GI mortgage loans as of December 31, 1952, showing the number of such loans, the outstanding balance as of that date, and the average balance of each loan broken down as to offices.

Q. And is this a copy of a report prepared in the regular and ordinary course of business?

A. It is.

(936) Q. Was it the regular course of business of the bank to have such reports prepared and filed with the Board of Directors for its consideration?

A. It was.

Q. Was it prepared monthly, bi-monthly, or quarterly, or how?

A. Monthly.

Q. And does it truly and correctly reflect the transactions or the balances as to the end of the period indicated?

A. It does.

Mr. Klein: I would like to offer Plaintiff's Exhibit 4-D in evidence.

Mr. Dexter: Same objection as to Exhibit 4-C.

The Court: Same ruling.

Q. * * * I will show you Exhibit 4-E, and ask you what that is, sir?

A. This is a consolidated report of installment loans, showing the outstanding balance as of December 31, 1952, as compared with December 31, 1951, broken down as to automobile collateral, FHA improvement loans, personal loans, trailer loans, dealer floor plan loans, and total, showing the number in each category, the outstanding balance in each category, the percentage to the total, and then a past due record of each of the categories, broken down as to 30 days past due, 60 days, 90 days or more, total past due, showing the number and the amount in each instance, the percentage delinquent, (937) percentage as to number, percentage as to amount.

Q. When you say "consolidated," that means the bank as a whole?

A. Yes, sir.

Q. And then attached to that are similar statements for each of the offices?

A. Yes, sir.

A. And were these reports prepared in the regular course of business of the bank?

A. Yes, sir.

Q. And was it the regular course of business of the bank and its officers to prepare such reports and to file them with the Board of Directors each month?

A. Yes, sir.

Q. And you have the originals of such reports as filed with the Board here in the courtroom?

A. I have.

Q. And pointing to an item in the third line of each of these tables marked "FHA," what does that mean?

A. They are FHA improvement loans outstanding and unpaid as of December 31, 1952, as compared with December 31, 1951.

Q. Is that the figure you discussed before for modernization and improvement?

A. Yes, $8,317,000.

Q. And you testified, I believe, that about ninety-eight per (938) cent of that was for residential loans?

A. I did.

Mr. Klein: I should like to offer Exhibit 4-E in evidence, sir.

Mr. Dexter: Same objection, your Honor, as to 4-D.

• • • • •

The Court: I do not think we had a ruling on this. The ruling will be the same as on the preceding exhibits 4-A, B, C, and so forth.

Q. • • • I will show you some papers which have been marked Exhibit 5-A, and ask you what they are—Exhibits 5-A, B, C, D, E, F, and G; what are they, sir?

A. These are new mortgage loans made during 1952, broken down by offices, according to the types of loans, FHA, GI, conventional, showing the name of the mortgagor, the type of collateral, the (939) amount of the loan, the appraisal value, by months, commencing with January, 1952, and each month thereafter, to December, 1952.

Q. And each one is for each month at each office, is that correct?

A. That is correct.

Q. And were these reports of loans made during the month in question?

A. They are.

Q. And they were reports to whom?

A. The Board of Directors.

Q. And were these reports prepared by the officers of the bank in the regular course of business?

A. They are.

Q. And was it the regular course of business of the bank to prepare and file and submit such reports each and every month to the Board of Directors, showing those transactions which had occurred in the preceding month?

A. Yes, sir.

Q. Were the pencil marks on the left side, the margin there, on the reports as they were filed with the Board of Directors?

A. No, sir.

Q. Do you have the originals of these reports in the courtroom as they were filed with the Board of Directors?

A. Yes, sir.

Q. And you say they are broken down by types of mortgage and totals and appraisal amounts?

(940) A. Yes, sir.

Q. And are they to advise the directors of transactions on mortgages made during the preceding month?

A. Yes, sir.

Q. How soon after the month end period are they filed with the Board?

A. The second Friday.

Q. And on the left margin of each of these reports there are some pencil notations, are there not?

A. Yes, sir.

(941) Q. At whose direction were they placed there?

A. My direction.

Q. And what do those penciled numbers indicate?

A. They represent the page number and the line on which these particular mortgages appear on the schedule that we prepared covering recorded mortgages, which is Exhibit 65-A.

Q. Through F, I believe. In other words, the pencil mark will indicate the mortgage made as the reference appears in 65-A through F, the abstract of mortgages which has been offered into evidence here?

A. Yes, sir.

Q. Were they reports of loans which had been closed in the month in question?

A. Yes, sir.

Q. And were they reports of the moneys actually disbursed for such loans?

A. Yes, sir.

Q. Were they new loans or old mortgages to refinance other existing indebtedness?

A. Mostly new.

Q. Mostly new loans for new mortgages?

A. Right.

Q. Do they represent mortgages to secure past indebtedness of other character of the bank?

A. Might be two or three, very, very few.

(942) Q And what was the purpose to be considered by these reports by the Board of Directors?

A. We report all loans, all new loans, to the Board of Directors every month.

Q. And in operating the bank are they discussed at the bank board meeting?

A. They are reviewed.

Mr. Klein: I should like to offer Exhibits 5-A through 5-G, inclusive.

* * * * *

Mr. Dexter: I make the same objection, your Honor.

* * * * *

(944) The Court: The same ruling.

* * * * *

Q. * * * I will show you a paper which has been marked Exhibit 5-H and ask you what it is. Just describe what it is.

A. This is a recapitulation of real estate loans made in 1952, showing a breakdown between residential and commercial by (945) offices, showing the number under residential, the total amount of loans made, the average made by offices, and the same thing for commercial, and then a further breakdown in the same manner for FHA real estate mortgage loans made during 1952.

Same information for GI real estate mortgage loans made in 1952, and a breakdown for regular real estate mortgage loans made in 1952, as to residential in one section and commercial for another section.

Q. And at whose instance was this Exhibit 5-H prepared?

A. At Mr. Dexter's.

Q. Mr. Dexter wrote a letter to me and he wrote and asked you to prepare these tabulations for him?

A. Yes, sir.

Q. And at his instance we have had them prepared, have we not?

A. Yes, sir.

Q. And are they prepared from the books and records of the bank and the tables to which you have just referred in Exhibit 5?

A. Yes, sir.

Q. And do they clearly reflect the record?

A. They do.

Mr. Klein: I should like to offer Exhibit 5-H into evidence, which was prepared at Mr. Dexter's request.

Mr. Dexter: Same objection, your Honor.

* * * * *

(946) The Court: Same ruling.

(A tabulation was marked Exhibit No. 98 by the reporter.)

Q. * * * I will show you a tabulation which has been marked Exhibit 98 and ask you what it is, sir.

A. This is a report covering the comparison of time deposits in the Michigan National Bank as compared with the shares in savings and loan associations as of the close of business December 31, 1952, broken down as to cities, Battle Creek, Flint, Grand Rapids, Lansing, Marshall, Port Huron and Saginaw, and showing the consolidated or combined figures.

Q. And were they prepared from exhibits in this case?

A. They were.

* * * * *

(947) Q. And is it corerct to say that Exhibit 98 is a recap or summary based on figures appearing in Exhibits 4-A, 36, 45-F, 57-F, 61-F, 73-E, 77-D, 81-D, 87 and 92?

A. Yes, sir.

Mr. Klein: I should like to offer Exhibit 98 into evidence. * * *

Mr. Dexter: Object, your Honor, to it as not being the best evidence, and apparently it is a summation of evidence already admissible, with the exception of 4-A, and it has no evidentiary value whatsoever.

* * * * *

(950) The Court: Let's proceed with this witness as far as today is concerned, and you may go ahead and examine this witness on the condition you eventually comply with the Court's ruling with respect to the admissibility of the Exhibits 4 and 5, and the letters under them.

Now, to come back to 98 again, where we left a moment ago, if 98 is based in part upon Exhibit 4-A, why, then it is not admissible under the Court's present ruling. I have no objection to it as a summary of other evidence. That may be very helpful on that, and if you want to mark it as an exhibit for that purpose, I have no objection to it being marked as an exhibit. Technically, I think probably counsel is right. You can't make evidence out of it by marking it as an exhibit, but at any rate, I have no objection to summaries that are helpful to us here if they are based on something that is admitted in evidence.

* * * * *

Q. * * * I will show you Exhibit 99 and ask you what this is, Mr. Fairles?

A. This is a report covering the comparison of real estate mortgage loans outstanding in the Michigan National Bank as compared with savings and loan associations as of the close of business December 31, 1952, and broken down as to the cities of Battle (951) Creek, Flint, Grand Rapids, Lansing, Marshall, Port Huron, Saginaw, with a combined picture of all offices, all cities.

Q. And is that predicated on exhibits already offered into evidence?

A. It is.

Mr. Klein: Some of those exhibits, sir, are—I think one of them is within the Exhibit 5 category. The others, I think, already have been admitted in evidence (handing exhibit to Mr. Dexter).

Mr. Dexter: The same objection as to Exhibit 98.

The Court: Same ruling.

Q. * * * On your conventional mortgages taken in 1952, what was the ratio of mortgage to appraised value?

* * * * *

A. I haven't figured out the ratio on conventional mortgages. I haven't got the computation on the ratio of conventional mortgages.

The Court: I don't think he understands your question. This is the ratio of the amount of the mortgage to (952) the appraised value; isn't that what you are asking?

Mr: Klein: Yes.

A. I understood the question. We have the ratio for FHA and I have it for GI, but I don't have it for conventional.

Q. (By Mr. Klein): Well, what are they for FHA? What were they in 1952?

A. In 1952, under FHA, for January, 1952, of all loans made, it was 73 per cent. The loan was 73 per cent, or the loans were 73 per cent of the total appraised value.

Q. How about the GI?

A. Well, that was in Battle Creek under FHA.

In Flint it was 71 per cent.

In Grand Rapids it was 72 per cent.

In Lansing, 78 per cent.

In Marshall, there just happened to be one. It was 57 per cent.

In Port Huron, 79 per cent.

And in Saginaw, 76 per cent.

That was in January. I didn't figure them for all of the other months.

Q. And how about the veterans' loans in '52?

A. Well, there didn't happen to be any in Battle Creek for January.

And in Flint, there was one. It was 80 per cent.

In Grand Rapids, there didn't happen to be any in January.

(953) The same in Lansing.

Same in Marshall.

In Port Huron, the average was 89 per cent.

We didn't happen to have any in January for Saginaw.

Q. Do you know the term or length of FHA mortgages that the bank made in 1952?

A. It would be around twenty years.

Q. And how about GI or Veterans' loans?

A. It would be about the same.

Q. And how about conventional or regular loans?

A. The majority of them would be ten years.

Q. And what was the interest rate to borrowers on FHA mortgages in 1952?

A. Four and a quarter per cent, plus the one half per cent service fee.

Q. Is that the insurance that we have been talking about?

A. One half per cent FHA insurance.

Q. Is that paid to the FHA, the one half per cent?

A. It is.

Q. And is there any possibility of refund on that to the borrower?

A. I understand there is a possibility.

Q. And Veterans Loans, what was the interest rate charged by the bank on those loans in 1952?

A. I think it was four per cent; I am not sure.

(954) Q. And on conventional or regular loans in 1952?

A. In 1952 I believe the rate would range from five to six.

Q. What were most of them at, so far as you know?

A. I believe most of them in 1952 would be perhaps five per cent.

Q. And do you know on what basis these loans were amortized, these mortgage loans?

A. On a monthly basis.

Q. Was that true of FHA?

A. It was.

Q. Conventional?

A. Yes, sir.

Q. And GI?

A. Yes, sir.

• • • • •

Q. Do you know what the average amount of the savings deposits were at the Michigan National Bank in 1952?

A. Yes, sir.

Q. What period are we talking about?

A. December 31, 1952.

Q. What was the average amount of savings? We are talking about (955) time savings deposits, aren't we?

A. Savings book deposits.

Q. Yes. What was that amount?

A. The bank as a whole, $647.00 average.

Q. And do you have it broken down by offices?

A. Yes, sir.

Q. Do you have the amounts for each office?

A. I do. Battle Creek, $574; Flint, $627; Grand Rapids, $798; Lansing, $654; Marshall, $891; Port Huron, $684; Saginaw $580.

Q. What was the interest rate paid by the bank on savings deposits in 1952?

A. Savings book deposits; we had two classes of accounts, we had time certificates of deposit and savings book deposits.

Q. Savings book deposits?

A. Savings book deposits in 1952, we paid one per cent per annum, except our Flint office, for competitive reasons, paid one and one-half per cent per annum.

Q. That was in 1952?

A. That was in 1952.

Q. What interest rate has been paid since 1952—and this is subject to the special record, I suppose, in view of your Honor's ruling.

A. All right. This is on savings book accounts?

Q. That is right.

(956) A. All right. 1953 it was one per cent per annum, except Flint, one and one-half, and as of December 1, 1953, the Saginaw office commenced paying one and one-half, from one per cent.

1954, one per cent per annum, with the exception of Flint, that paid one and one-half to November 30, 1954, then they increased it to two per cent effective December 1, 1954. The Saginaw office paid one and one-half per cent per annum.

1955, one per cent per annum to May 31, 1955, effective June 1, 1955, it was two per cent—some of these were paying quarterly and some semi-annually; I don't know whether you are interested in that or not.

1956, two per cent per annum to February 8th, 1956, except—there wasn't any exception there, it was just on the dates of payment—two and one-half per cent as of March 1, 1956.

In 1957, the Federal Reserve regulations were changed to permit the payment of three per cent as of January 1, 1957, which we commenced paying at that time, and we were on a uniform basis in all offices, and crediting the interest quarterly, January 1st, April 1st, July 1st and October 1st.

In 1958, we are on the same basis as 1957.

Q. Was that three per cent?

A. Three per cent, payable quarterly.

Q. And is the interest rate guaranteed to your time depositors or (957) not?

A. It is.

Q. In other words, the bank obligates itself contractually to pay the agreed interest rate?

A. Yes, sir.

Q. You are obliged to pay it whether you make money or not?

A. We are obliged to pay the rate that we obligate ourselves to pay the depositors.

Q. Right. What determines the amount of interest rate paid by your bank in 1952, and time prior and thereafter?

* * * * *

Q. (By Mr. Klein, continuing): What factors do you consider, did the bank consider?

A. We considered competition for funds as the main reason for a change.

* * * * *

(958) Q. Do you know who your competitors are?

A. I do.

Q. For savings funds?

A. I do.

Q. And do you know who they were in 1952?

A. I do—I did.

Q. And who were they in 1952?

A. The other banks and the Savings and Loan Associations, and the U. S. Government, in the form of savings bonds.

Q. And did your bank endeavor to get more time deposits, and is it still endeavoring to do so?

A. We did, and we are.

Q. What factors did the bank consider in 1952 in setting its interest rates, and what factors does it presently consider—part of it is subject to the special record?

A. We consider the competition for funds and the fact that we could pay as high a rate as we could for time deposits and still make money by loaning the funds.

Q. Were you aware of the rates paid by the Savings and Loan Associations as dividends on savings shares in 1952?

A. We certainly are, and were.

Q. And was that a factor in the bank setting its rates of interest on time deposits in 1952?

(959) A. It certainly was, and is.

Q. Are those dividend rates, or were those dividend rates paid by the Savings and Loans in 1952 an important factor in that determination?

A. They were.

Mr. Dexter: Your Honor, I wish he would explain what he means by the word "important" to the witness.

Q. All right. Will you explain what you mean by the word "important," at Mr. Dexter's request?

A. We either pay the going rate for funds, or we do not get the funds, whether it is from a savings bond or from Savings and Loan Associations, or any other organization that is paying for money.

Q. And you get funds, savings funds from whom?

A. Anybody that has money.

Q. And savings connotes what?

A. Thrift.

Q. What do you mean by time deposits?

A. A deposit on which a notice is required.

Q. In other words, that is different than an ordinary commercial deposit?

A. Or demand deposit, yes.

Q. And does that generally connote long time keeping of funds as compared with the usual checking account deposit?

A. In order to pay three per cent on the money, it is required (960) to be on deposit six months.

Q. And is there any limitation as to the amount of mortgages you may make, based upon the amount of your time deposits?

A. There is.

Q. Was there in 1952?

A. There was.

Q. Had you exhausted that limitation in making your mortgage loans in 1952?

A. No, sir.

Q. However, it follows, I assume, that the more time deposits the bank has the larger amount available to be loaned on mortgage loans?

A. Yes, sir.

Q. Did mortgage loans in 1952 produce a higher rate of return than the ordinary commercial loan?

A. They did.

Q. And, as you testified, they represented about, I think you gave a figure of about 35 per cent of your total loans, and if you include the improvement installment loans, about 40 per cent, in 1952?

A. You are talking about residential?

Q. Yes.

A. Only excluding business and farm. 40 per cent of our total loans were residential loans and home improvement loans.

(961) Q. And if you excluded the home improvements, it amounted to about 35?

A. 35 per cent, right.

Q. Do you know the average amount of your mortgage loans in 1952, on residential property?

A. No, I don't. Let me see. Wait a minute. Yes, I do.

Q. What were they, sir?

A. Residential property—this is on the loans made in 1952?

Q. Made in 1952.

A. This is not on the ones outstanding in 1952?

Q. That is right.

A. All right. The average real estate mortgage loans, residential, for the bank as a whole in 1952 amounted to $6,802.

• • • • •

(962) Q. * * * Do you know who the competitors were of the bank in 1952?

A. I do.

Q. For mortgage loans?

A. Yes, sir.

Q. Who were they?

Mr. Dexter: Your Honor, I wish Mr. Klein would define his terms.

Mr. Klein: I will define my term.

When two or more people are seeking some business, residential mortgage business, in the same locality and on the same type of security, I would say they are competitors. Each one of the Building and Loan officers, or most of them, were asked that question and they said, "The banks and other Building and Loans and insurance companies." I am merely asking Mr. Fairles the same question.

A. The competitors were other banks, Savings and Loan Associations, insurance companies, and individuals.

Q. Was the bank aggressively seeking mortgage loan business in (963) 1952 or not?

A. We were.

Q. And I think you testified you did not exhaust all of your available mortgage money in mortgage loans in 1952?

A. That is right.

Q. Now, just so the Court may understand the method of bookkeeping at the bank, when a mortgage loan is made what documents are signed?

A. There is a real estate mortgage signed. and a real estate mortgage loan, application for it.

Q. Yes. And, is it the practice of the bank to record the mortgage?

A. It is.

Q. And the record of those mortgages appears in the abstract, Exhibit 65, does it not?

A. That is right.

Q. That is, those made in 1952?

A. Yes, sir.

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(983) Lansing, Michigan,
Tuesday, July 15, 1958,
9:30 o'clock A.M.

• • • • •

(1054) The Court: With respect to the Savings and Loan records.

My thinking is that probably technically I should say that these exhibits are not to be received until they have been properly identified, and whatever substantiating documents are necessary to be produced in order to make them admissible have been actually produced.

But, that does not make a very workable situation for the next day or two here. You are wanting to have the exhibits so you can question witnesses about them, and read part of them into the record, and treat them as though they were actually in evidence, and if I say "No, they are not in evidence," then technically you wouldn't have any right to use them. I do not want to put you in that position, or myself either. I want to go as far as we can within the next two or three days, or a day or two, as the case may be; so it seems to me it would be a fair statement to say they were admitted conditionally. That often happens in the course of a trial; we admit a certain document like a photograph because the lawyer says, "I will have the photographer here this afternoon who will identify it," and I take his word (1055) for it and let it in evidence, and it seems to me

we could follow something like that here, that these are received conditionally and you may treat them, as far as examining witness is concerned, just as if they are in evidence, but they are received upon the condition and with the understanding that if required you will produce the documents that the court rules are necessary to be produced in order to make them admissible. Such, for instance, as these journal entries here that you put in this morning, that I did receive in evidence, Exhibits 4-A-21, 4-A-22, and 4-A-23.

Now, there will be other documents of a similar character that may conceivably require to be produced after Mr. Dexter gets through. If I do, they will have to be produced, and if for any reason they are not produced, and I cannot anticipate from what you said, of course I will have to strike out the exhibits that were so received conditionally. I do not anticipate that would happen, but so far as the procedure, they are received conditionally at this time, and you may, as far as asking questions is concerned, go right ahead and ask your witnesses questions about them as if they were in evidence.

If for any reason they are eventually stricken out, everything in reference to them will have to be stricken out; and I presume at that time you will make it part of your separate record.

(1056) Mr. Klein: The exhibits we are talking about are Exhibit 3—

The Court: The report to the Controller.

Mr. Klein: 4-A, 4-B, 4-C, 4-D, and 4-E; and in respect to those, there is no question that the photostatic copy may be substituted for the original report to the Board of Directors, I assume. Is that right, Mr. Dexter?

Mr. Dexter: Yes.

Mr. Klein: 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, and 5-G, which are also photostatic copies of reports to directors;

and I understand in respect to those, Mr. Dexter, the photostats may be substituted for the original reports in the bound volumes?

Mr. Dexter: We would make no objection to them on the basis that they were photostats rather than the originals of the bound volumes.

Mr. Klein: Then 5-H, which is a recapitulation, and various summaries from these various other exhibits, Exhibit 98 and Exhibit 99, which are also summaries, most of which are based on exhibits already admitted, and some on one or two exhibits, or several exhibits conditionally.

And then I suppose, in view of your Honor's statement about the Building and Loan Associations, that also refers to the series of exhibits 36 and 37, the monthly report of the Building and Loan filed with the Secretary of (1057) State for December 31, 1952; and in the 37 series the annual reports filed with the Secretary of State of the State of Michigan.

The Court: I think that is true, Mr. Klein.

* * * * *

(1060) FAIRLES, RUSSELL, thereupon resumed the stand as a witness on behalf of the Plaintiff, and testified further as follows:

Direct Examination (continued)

By Mr. Klein:

Q. Mr. Fairles, we were discussing the question of savings, time savings accounts. Would you describe the difference between time savings accounts and commercial accounts in the bank?

A. Commercial demand deposits are payable on demand.

Q. You pay interest on it?

A. We do not pay interest on demand deposits or commercial deposits.

Q. And savings accounts?

A. Savings book accounts, there is a 30-day notice may be invoked if desirable, and then there are time certificate of deposits accounts that are issued for a specfic time.

Q. And I think you gave us the changing interest rates on the time-book accounts, savings accounts, did you not, before?

A. I did

Q. Would you give us the interest rates paid on the certificate of deposit accounts you just referred to?

A. Effective, or at a committee meeting held December 30, 1947, the matter of rate of interest to be paid on time certificate of deposit was presented and discussed. Upon motion duly (1061) made and seconded, the committee unanimously approved a recommendation to the Board of Directors providing for payment of interest on the following basis:

Time certificate deposit, 90 days to 6 months, interest at the rate of one-half of one per cent. Seven months or more, interest at the rate of one per cent.

Effective, or at an executive committee meeting held February 27, 1948, upon motion duly made and seconded, the following rates of interest upon time certificate deposit to be issued under authorization of the Board of Directors February 20, 1948, was unanimously approved.

Q. You don't have to give us the resolution. Just give us the interest rate and the basis for the interest on the certificate.

A. On deposit six months, less than one year, one per cent per annum from date of issue upon 30 days' written notice.

On deposit one year, less than two years, one and a quarter per cent per annum from date of issue upon 90 days' written notice.

On deposit two years, less than three years, one and a half per cent per annum from date of issue upon 90 days' written notice.

On deposit three years, less than four years, one and three quarter per cent per annum from date of issue upon 90 days' written notice.

(1062) On deposit four years to less than five years, two per cent per annum from date of issue upon 90 days' written notice.

On deposit five years, two and a half per cent per annum from date of issue upon 6 months' written notice.

As of April 27, 1949, the interest on certificates was changed to the following: on certificates of deposit, interest is to be paid at the rate of two per cent per annum for six months to less than five years and two and a half per cent per annum for five years. Interest may be paid at the end of each six-month period if requested, and if paid, it is to be endorsed on the reverse of the certificate and registered properly.

On Jannuary 22, 1953—

(1063) Mr. Dexter (interposing): I assume, your Honor, that that is on a separate record.

Mr. Klein: Separate record.

The Court: Very well.

Q. (By Mr. Klein): Go right ahead, sir.

A. (Continuing): —time certificates of deposit were authorized to be issued at 2½% per annum if on deposit for a six-month period. See, that eliminated the five-year requirement. We commenced paying interest on the basis of 2½% for six months' money.

Effective January 1, 1957, we paid interest at the rate of 3% upon six months' notice. That was when the rate was officially increased to 6% by the Federal Reserve.

Q. 6% or 3%?

A. I mean 3%, I'm sorry. By the Federal Reserve. On June 10, 1955 we commenced paying 2½% per annum, from date of issue on non-negotiable savings deposit receipts.

Effective January 1, 1957 we increased the rate to 3% on these savings receipts.

I believe that brings us down to the present time. We are paying 3% on savings receipts. We are paying 3% on time certificates of deposit in which six months' notice is required.

Q. And what about regular savings books?

A. Regular savings passbook accounts, effective January 1, 1957, we commenced payment at the rate of 3% per annum. That was (1064) mentioned previously.

Q. In 1952 or prior did the bank have any special thrift plan?

A. We had a Christmas Club plan, and we consider all of our savings book accounts thrift accounts—savings accounts or thrift accounts.

Q. How about your certificates of deposit?

A. Prior to the time we increased the rate on savings book accounts to the higher rate, we had a great many of thrift depositors in the time certificate of deposit classification.

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Mr. Dexter: Your Honor, of course we would reserve the right to cross examine Mr. Fairles at the time that we have had a chance to make an examination of the books and records, since his testimony has been completed.

• • • • •

(1066) DE YONKER, ARTHUR F., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

* * * * *

Q. * * * You are employed by the Michigan National Bank?

A. At the Flint office.

Q. Flint office of the Michigan National Bank?

(1067) A. That is right.

Q. And what is your official title?

A. I am Vice-President in charge of the Mortgage Department.

Q. And how long have you occupied that position with the bank, Mr. DeYonker?

A. Well, I started in 1934 with the Michigan National —or, with the National Bank of Flint, and that was purchased by the Michigan National Bank in 1942; and prior to that time I was Assistant Cashier, and in 1943 became Vice-President.

Q. So that you have been a vice-president in charge of the mortgage loan department since 1943?

A. That is right.

Q. And how long have you lived in the Flint area?

A. About 24 years.

Q. And will you tell the Court what the function of the mortgage loan department of the Flint office has been?

A. Well, of course Flint is part of our residential city—I mean we have a lot of General Motors plants,

and there are necessarily a lot of factory workers, so our community is made up of homes, to provide for these factory workers. We do not have the high-priced houses that we have in other communities. So, our function there was to provide housing, because General Motors has expanded their plant facilities and their square feet by increasingly numbers, and, of course, it was the job of the banks and Associations to (1068) provide mortgage moneys for this new housing.

Q. And how large a city is Flint?

A. Well, the Flint area that we speak of, Genesee County is between, about 275,000; the city proper is about 165,000.

Q. And in what area does your mortgage loan department operate?

A. In Genesee County.

Q. Genesee County only?

A. Yes.

Q. Now, I will address myself to the year 1952, Mr. DeYonker, except as I indicate otherwise.

In 1952, what types of mortgages was the bank taking on properties in Genesee County?

A. Well, we made about three hundred and sixty mortgages in that year, and less than twenty of them were of a type other than residential. It was chiefly residential. We do not have any side industries that are required to borrow. And, of course, we have a few churches, but other than that it is entirely residential. Less than twenty of the three hundred and sixty mortgages we made in 1952 were of a type other than residential.

Q. Now, considering the residential mortgages; what types of mortgages did you employ in that year?

A. Well, we had the FHA, VA, and conventional, or sometimes called the regular mortgage.

Q. And would you describe to the court what an FHA mortgage is; (1069) what is that?

A. Well, an FHA mortgage is a mortgage loan, of course, on which the borrower is able to borrow a higher percentage of the value of the property than a regular mortgage, because you are not limited to the limitations which were in effect then of sixty per cent; and the mortgage is then insured by the FHA; the fee is paid in connection with your monthly payments, called mutual mortgage insurance, so the bank is protected against any loss in case of foreclosure.

Q. You said sixty per cent; what type of mortgage were you referring to?

A. Conventional or regular type mortgage.

Q. So you could loan more money on the same type of property under an FHA type mortgage?

A. Yes.

Q. In 1952?

A. In 1952 we could loan ninety per cent of the first $7,000, and it was a sliding scale. We could loan then 85 per cent of the next $3,000. In other words, a $10,000 mortgage would require a down payment of $1,150.

Q. I see. And, on a conventional you would have to require forty per cent of that $11,000 down, is that roughly right?

A. Yes, that is right.

Q. At a minimum?

A. We could loan sixty per cent, which would be the maximum of (1070) the loan.

Q. Now, on the FHA mortgage what was the rate of interest?

A. Four and a quarter per cent.

Q. And what charges were there in connection with the FHA type mortgage?

A. Your charges are no different than a conventional mortgage, but in the program set up by the FHA you do pay a year's taxes in advance, and you pay your insurance in advance for three years; in most cases it is three years; you can pay just one year, but as far as the cost part, there is no different costs in an FHA mortgage than there is on a conventional mortgage. You still must have your attorney's opinion, and you must record the mortgage. You must have an appraisal of the property. And, in our case, of course, we have a survey of the property. We feel it is good protection to the customer to know that the house is built on the right lot.

Q. And what about the term of the mortgage, in number of years, FHA?

A. Well, the maximum was twenty-five years. Our average mortgage on an FHA in 1952, the term was 21½ years.

Now, VA it was also 21½ years. They were also permissible to go to 25 years.

Q. Sticking to the FHA for a moment, Mr. DeYonker, what was the procedure that your office went through in connection with the execution of an FHA mortgage?

(1071) A. Well, of course, to start with you must file an application for a firm commitment. Most FHA mortgages, a builder will arrange the conditional commitment prior to the time the applicant comes to us, so the applicant does know how much of a mortgage he can get on that property, provided he meet the credit requirements.

Then we get their credit report. We must get a verification of their earnings, and we must get a verification of their bank deposits, and we send that to the FHA,

and if it meets their approval they issue a firm commitment on which we can close the mortgage.

Q. And in 1952, what was your experience so far as the time necessary to close an FHA mortgage loan?

A. Well, I would have to break that down in two parts. If we had to appraise the property, which we only have to do in five to ten per cent of the cases, it would take about three weeks to a month.

If we only had to check the credit—we have the appraisal made and inspections of the property and everything made, then it would take about, the maximum of two weeks.

Q. Now, on the VA type mortgage, would you explain that briefly to the court, what that involved?

A. Of course that is a mortgage made only to veterans, and they can only get one loan. They must have their eligibility, which (1072) is given by the government, and if they meet that requirement then they are eligible to borrow on the loan, and a portion of that loan is guaranteed by the government.

Q. I see. And what was the rate of interest on that?

A. Four per cent.

Q. And what additional charges were there on this type of mortgage?

A. Well, the charges were about the same as on FHA. You would have to do the same thing, check your title and record your mortgage, and if you want a survey of the property, and you want an attorney to check the title.

Q. And what was the time that was necessary to close that sort of a mortgage loan?

A. Well, the VA mortgage, of course they were quite disorganized down at Detroit there, and the time was,

oh, we would go from two to three months before we could get a VA mortgage through. They were very slow, and I say the reason was they had a very large volume put on them, and the men were not trained in the mortgage business, and we found it hard to get the type of service that we got from FHA.

Q. So that it took a longer period of time?

A. It took a longer time, yes.

Q. Now, what about the term in numbers of years?

A. Our average mortgage was 21½ years.

Q. And how long could such a mortgage be given for?

(1073) A. 25 years.

Q. Now, your conventional mortgage, so-called, would you describe to the Court what you mean by that term, as you used it in 1952?

A. That is a mortgage, of course, without being insured, or without being guaranteed. The law at that time was that you could loan up to sixty per cent of the appraised value of the property; and forty per cent of the mortgage was amortized in ten years, if it was, you could extend it for another ten years.

Q. What do you mean by that?

A. I mean, of course, all mortgages were monthly payments. A mortgage that is sixty per cent, in fact any mortgage over fifty per cent must be amortized monthly on a conventional mortgage. So if the monthly payment—by making monthly payments at the end of the ten year period your balance was less than sixty per cent of the amount, of the original amount of the loan, you could then extend the balance over another ten years.

Q. And did you do that in fact in 1952, do you recall?

A. Yes, we did that in a few cases; not too many. There was quite a mortgage turnover, and a lot of mortgages are really paid before the ten years is up.

Q. What do you mean by that?

A. Well, I mean places are sold, or families go in and buy a (1074) house, they have no children, and they buy a two-bedroom house, and four, five or six years they have two or three children and they need larger quarters. So we have had, as I say, a heavy turnover because of the heavy extra employment that was put on by General Motors.

Q. Now, were all mortgages amortized, as you put it, on a monthly basis, all of these mortgages we have been talking about?

A. Yes; we didn't have a mortgage that wasn't amortized on a monthly basis, not one mortgage in our portfolio.

(1075) Q. One other thing I would like to cover with you on the veteran's mortgage. What is the percentage of appraised valuation which you could loan on?

A. Well, you could loan one hundred per cent. Of course, a VA is different from an FHA. A VA mortgage, you could not make a mortgage, of course. Let's put it this way. The veteran could not pay more than the appraised value.

In other words, if the property was offered for $10,000 and the VA appraised it at $9,500, the veteran could not close the mortgage and pay more than $9,500 for the property.

Q. Do you remmber what your actual practice was in 1952 so far as the percentage of appraised value that you were loaning in the case of veterans?

A. In most cases we would go the hundred per cent. We would have to size up each case. We had some ten per cent, and we have had some hundred per cent.

Q. And in the case of the FHA would you say how much you were loaning as a matter of practice?

A. Well, we loaned what the FHA would commit for.

Q. And so far as conventional, what was your practice in 1952?

A. Well, most of our mortgages were 60%. Of course, if the people only required a 50% mortgage, that was all they wanted, and the appraisal wasn't more, we would make it, and the time on our conventional mortgage was practically ten years. In fact, it is about 9.7 is the actual time that we drew the (1076) mortgages for.

Q. Now, was there any pre-payment penalty in your conventional mortgage?

A. No, there was not.

Q. What do you understand I mean by the term "pre-payment penalty"?

A. Well, pre-payment means if you pay the mortgage ahead of schedule.

Q. And was there any pre-payment penalty in the FHA type mortgage in 1952?

A. Well, there was no penalty up to June 30, 1952. In 1948 the President issued an order, time of the Korean War, that permitted VA's to pay as much on their mortgages as they wanted without penalty. On June 30, 1952, that was removed, and after that time and up to the present time there is a one per cent pre-payment penalty, although you are permitted to pay 15% of the original amount of the mortgage each calendar year. You can make extra payments if you wish without penalty.

Q. And was there any pre-payment penalty in the GI type mortgage?

A. No, there never has been.

Q. During 1952 you made all three types of these mortgages, is that right?

A. That is right.

Q. And did you make each type of such mortgage during each quarter (1077) of 1952?

A. Yes, we did.

Q. And I have asked you to select samples of each type of mortgage. Have you done so?

A. I didn't select them. I told the girl that is in charge of our mortgage to pick one out of each one.

Q. And did she do that?

A. She picked out the ones. Some of the VA's were paid. I think one-quarter we didn't have a VA.

Q. Now, I will show you what has been marked as Exhibit 101-A-1 through 101-A-10 and ask you just first to identify to the Court what that is. I mean just tell us generally what it is first, will you please?

A. This is a mortgage note on an FHA mortgage that we made.

Q. Before you do that would you just describe generally what those ten exhibits are?

A. Those are photostatic copies of the original documents which I have with me, mortgages made in 1952.

Q. And do you have four FHA types of mortgages?

A. Yes.

Q. And they are mortgages that were actually executed?

A. That is right.

Q. And the loans made?

A. That is right.

Q. And do you have four conventionals?

(1078) A. There are three conventionals, I think, and three VA's.

Q. And where possible you have gotten them for each quarter of the year; is that right?

A. That is right.

Q. And will you explain what Exhibit 101-A-1 contains, what it consists of?

A. That is an FHA form mortgage note in the amount of $7,200 to our borrower with interest at four and a quarter per cent payable twenty years.

Q. And what are the other documents? Just identify them, if you would.

A. An FHA mortgage— * * * And the application to the FHA for insurance and a photostatic copy of the ledger sheet.

Q. And that all consists of 101-A-1?

A. That is right.

Q. And is 101-A-2 the same sort of thing, only for a mortgage in the second quarter?

A. That is right, April 15, 1952.

(1079) Q. Consisting of the same papers?

A. That is right.

Q. And 101-A-3 is what?

A. That is an FHA for the third quarter, July 12, 1952.

Q. And 101-A-4 is what?

A. An FHA mortgage made November 8, 1952.

Q. For the fourth quarter?

A. That is right.

Q. And 101-A-5?

A. That is the conventional mortgage made in March 1952.

Q. Now, what does the conventional mortgage set consist of, 101-A-5? Would you simply identify the documents?

A. Yes, it is a mortgage note and a mortgage and the application and the ledger sheet.

Q. And what is 101-A-6?

A. That is a conventional mortgage made April 1952. It has the note, mortgage, application and ledger sheet.

Q. And 101-A-7 is the same, except that it is for another quarter; is that right?

A. That is right.

Q. (Continuing): —as A-6?

A. That is right.

Q. And what is 101-A-8?

A. That is a conventional mortgage dated October 25, 1952, conventional mortgage, mortgage note and mortgage and ledger sheet.

(1080) Q. And 101-A-9?

A. That is a VA type mortgage.

Q. What does that exhibit consist of?

A. Mortgage note, mortgage, application form, and photostatic copy of the ledger sheet.

Q. And 101-A-10 is what?

A. That is also a VA mortgage, August 1952, a mortgage, mortgage note, application and copy of the ledger sheet.

Q. Now, did you bring with you the originals of all of these documents?

A. Yes, I did.

Q. And you have them with you here in court?

A. Yes, sir.

Mr. Van Zile: I would like to offer Exhibits 101-A-1 through 101-A-10.

* * * * *

Mr. Dexter: May I ask what they are being offered for?

Mr. Van Zile: They are being offered in proof of the sort of mortgage business we were engaged in in 1952.

Mr. Dexter: Your Honor, I would object to them.

* * * * *

(1082) The Court: Wouldn't it be better to have the record have some question in it as to whether those forms were the forms used in the different types?

* * * * *

Q. (By Mr. Van Zile): Now, with reference to each of these Exhibits A-1 through 10, did each of them during the quarter which they are taken from, were they the same type of mortgage, mortgage note and application blank and ledger sheet that were used during that quarter? Is that correct, Mr. DeYonker?

A. That is right. For the entire year.

Q. Now, you do not contend, do you, that other mortgages would be identical in amount, and obviously not as to mortgagor, and not necessarily as to rate of interest?

A. Well, your FHA and your VA would be about the same rate of interest. There was a change on the FHA mortgage from 4¼ to 4½ during the year, so you may get that variance of a quarter of one per cent when the rate was changed.

Q. Well, may I ask you this question—

A. (Interposing): I think these are all 4¼, but I think there was a change, I believe, in the latter part of the year.

(1083) Q. Let me ask you this question: Do each of these mortgages during the quarter from which they are taken, are they fairly representative of the other mortgages of the same type which you made?

A. They are.

* * * * *

The Court: They may be received.

* * * * *

(1084) Q. (By Mr. Van Zile): Now, referring to Exhibit 101-A-1, which is an FHA mortgage in the first quarter, Mr. DeYonker, is there not an application form?

A. An application form.

Q. And was that the first step in procuring an FHA loan, the filling in of that application?

A. That's right.

Q. And what information does it contain in general?

A. Well, it asks the amount of the loan that they request, the length of time, the rate of interest. It also gives the financial statement of the parties, showing what their bank account is, what other assets they have. In this case it was (1085) some Series E Government bonds, furniture, and an automobile. It shows that they were employed at AC Spark Plug for seventeen years, and it shows the amount of life insurance that they carry, and also shows their annual income and their annual fixed charges, and their approximate housing expense.

Q. Now, when that application was made out, what was the next step?

A. Well, we first got the credit report from the credit bureau. We also had the verification of this bank account which was at the Merchants Mechanics Bank. We filed that with the FHA, together with the conditional commitment, and asked for a firm commitment. This application is for a firm commitment.

Q. And after approval, I take it the mortgage and mortgage note were executed at the closing; is that right?

A. That's right.

Q. And your original ledger sheet, which is also a part of that exhibit, was made up at the time of the closing; is that right?

A. That's right.

Q. Now, what does the ledger sheet show?

A. The ledger sheet shows the name, it shows the FHA case number, it shows the address of the property, it shows that it is a dwelling, it shows what the amount of the loan is, the maturity, and it shows the appraised value taken from the FHA firm commitment.

(1086) Q. And then, of course, it shows the payments?

A. It shows a breakdown of their principal and interest and your escrow payment, which is, of course, required on an FHA mortgage.

Q. And does it show that it is a dwelling?

A. Yes.

Q. And that is your "Dwg." appearing on that sheet?

A. That is right.

Q. Now, taking your conventional, your first conventional, which I believe is Exhibit 101-A-5, what was the first step occurring in that?

A. The filing of the application.

Q. The filing of the application?

A. Yes.

Q. And what does your application show contained in that exhibit number?

A. Well, they asked for a $7,500 mortgage. Of course, we could only make it for ten years. They did not want to pay the mortgage off in ten years, and we agreed on a principal and interest payment of $65, which would take, oh, probably fourteen years for that mortgage to amortize. Of course, a good deal more than 40 per cent would be amortized at the end of ten years, so there would be an extension made.

This application—of course, the FHA is filed on their own forms. Conventional is filed on our form. It asks

(1087) about the same information: What a man's assets are, his liabilities, what life insurance he carries, what his income is, and what his annual charges are against his income.

Q. And what do you consider in approving a mortgage loan or disapproving a loan?

A. Well, of course, first of all, the loan must be less than 60 per cent of the appraised value—60 per cent or less. The man must have sufficient income and credit standing in order that he can reasonably meet the payments that are required.

Q. And how about the real estate?

A. Well, the real estate—of course, in this case it was a residence, and the appraisal would have to be of such amount that the mortgage closed would not be more than 60 per cent of the appraisal.

Q. And then how long did it take you before you would close a conventional mortgage loan such as that?

A. Well, it takes about ten days. Of course, that depends somewhat on the people—how soon they get their abstract posted; and our attorney can give us 48-hour service and a survey at the same time, so I would say ten days to two weeks is the average time on a conventional.

Q. And then you, of course, have the mortgage and mortgage note which were executed, right?

A. That's right.

(1088) Q. And the ledger sheet?

A. Well, the ledger sheet, of course, gives the name, shows the type of mortgage as regular, it shows the address of the property, it shows it is a dwelling, it shows that the appraisal of the property was $12,750, it shows the monthly payment and the escrow payment.

Q. And it shows that it is a regular mortgage by type?

A. Yes.

Q. And when you say "regular," you mean the same as conventional?

A. That's right.

Q. Now will you turn to your GI type mortgage, Exhibit 101-A-9, and I take it the first step was again the application for a loan?

A. Well, no, that isn't the first step.

Q. All right. Would you explain the steps involved?

A. See, you must first determine whether a man has his eligibility before you go any further, and if he is a veteran, he comes in and he has a particular house in mind, why, he brings in his discharge. If he is honorably discharged, why, we will find out if he has used any of his eligibility. We get this certificate back, and then we proceed about the same as any other mortgage. We take his application, check his credit. Then the Veterans Administration makes the appraisal of the property.

Q. The application, though, that he eventually fills out is the same as on your conventional-type mortgages?

(1089) A. Same as our conventional, that's right.

Q. And after approval by the VA, I take it you have a mortgage note and a mortgage. Is that on their form?

A. On the VA form.

Q. Both of those?

A. That is required.

Q. And then you have a ledger sheet?

A. Which shows the address of the property, the term—this happened to be a 20-year mortgage—and it shows the principal and the interest and the escrow. It shows that it is a dwelling, and it shows the the appraisal—in this case the appraisal of the property was $6,400 and the mortgage was $6,000.

Q. So that it wasn't 100 per cent in that case?

A. He paid $400 down.

Q. All right. Now, in Genesee County and the Flint area, what other companies or individuals were engaged in te business of loaning money on the security of FHA mortgages?

A. Well, the other three banks, the Citizens Commercial Savings Bank, the Genesee County Savings Bank, the Merchants Mechanics Bank, the First Federal Savings & Loan, and Cook & Anderson, which were mortgage brokers.

Q. And you have not mentioned Detroit & Northern?

A. No. They had never qualified to make an FHA mortgage.

Q. So they made none. And how about the GI or VA type mortgage? (1090) Were all of those firms or persons you have mentioned making that type of mortgage?

A. Yes, I would say most of them, except the Equitable. Equitable Life, of course, at that time they reduced their rates, and they were kind of raiding the portfolio of some of the banks, and that is why one of your former men testified that they reduced rates on mortgages, because they were more vulnerable to the type of mortgages that Equitable—

* * * * *

Q. * * * Well, as I understand it, in any event—let's pass on to another question, Mr. DeYonker—and on the conventionals, what other individuals or institutions than those you have mentioned were engaged in making—.

A. (Interposing): They all made it. The Citizens Commerical Savings Bank, the Genesee County Savings Bank, the Merchants Mechanics Bank, the First Federal Savings & Loan, and Detroit & Northern, and Equitable

Life Insurance, and Cook & Anderson, mortgage brokers.

Q. And did you say Detroit & Northern was making the VA type loan?

A. Yes, they are.

(1091) Q. Now, during 1952 were there occasions, Mr. DeYonker, when you refinanced mortgages which were held by other institutions, and were they refinancing mortgages held by you?

A. Yes.

Q. And specifically, were there instances during 1952 where you refinanced mortgages held by savings and loan associations in Genesee County and the likewise refinanced mortgages which you held?

A. Yes.

Q. And now will you describe what you mean by the term "refinancing"?

A. Well, I brought some cases here with me, some samles, but here is what we do. We will say that the Detroit & Northern has a mortgage of $5,000 on a piece of property, and that maybe the value of the property is $10,000. A new buyer comes along and he wants to buy it, but maybe he has only got $1,500 down.

If they can't handle the refinancing of it, why, he comes to somebody that is making FHA mortgages, because that is the only way that you could borrow that portion, and we have got some of those, and others have.

Now, at the time we close our mortgage, we pay off his mortgage, get a discharge of that and clear the records.

Q. And when the reverse happens, what occurs?

A. Well, they pay us off.

(1092) Q. Now, is it always, in the refinancing, the same mortgagor that is involved?

A. No, in most cases it is not. There is a few cases it is, but most cases it is not. It is for sale of the property to another party.

Q. But in a refinancing, it is always the same piece of property; is that correct?

A. That's right.

Q. Now, I have asked you to select examples of that during 1952. Have you done so?

A. Yes.

Q. And I will show you what has been marked as Exhibit 102-A-1 through 17, 17 examples of this. Are those all of the examples?

A. That is the only—of course, I say some of these other mortgages have been paid and our records would not be there, but the mortgages that we had, of course we had a record where we paid them up, but where we were paid off, we didn't have any record.

Q. All right. Now let's take up first 102-A-1, and simply tell the Court exactly what that exhibit consists of.

A. Well, this was the mortgage on 1316 Denies Street in Flint, Michigan, on which there was a mortgage to Gerald W. and Jean Barton at the First Federal Savings & Loan Association dated April 9, 1949, recorded May 2, 1949, Liber 844 and pages 20, 21, 22 and 23, in the amount of $5,000.

(1093) We made a new mortgage in December of 1952 to a Charles E. Hoskins in the amount of $9,200, so in the process, we had a discharge of the above mortgage from the First Federal Savings & Loan Association dated December 24, 1952 and recorded December 31, 1952 in Liber 972, page 572.

(1094) Q. And do you have a picture of that residence?

A. Yes.

Q. And are you familiar with the residence?

A. Yes.

Q. And does it truely and correctly represent the residence as it was in 1952?

A. Yes.

Q. And next what do you have in Exhibit 102-A-1?

A. We have the photostatic copy—

Q. (Interposing): Certified copy?

A. Certified copy by the register—Earl M. Smith, Register of Deeds for Genessee County, and it shows the mortgage with a legal description and the terms of the mortgage.

Q. And what is the legal description, which is short in this case?

A. Lots 564 and 565, Lapeer Heights Subdivision.

Q. What do you have next?

A. Next we have the discharge of the mortgage that I have just read.

Q. And that is also certified?

A. That is certified.

Q. And that is from First Federal Savings and Loan Association?

A. That is signed by Mr. R. H. Parker, president.

Q. Next what do you have?

A. Next we have the mortgage itself.

Q. And what is the legal description on that?

A. Lot 564 and 565, Lapeer Heights, according to recorded plat (1095) thereof. That was an FHA type mortgage in the amount of $9,200. We have that also certified by the Register of Deeds.

Q. Now, were all the mortgages involved in these exhibits certified, as well as the discharges?

A. Yes.

Q. By the Register of Deeds?

A. That is right.

Q. And do you have the same information on Exhibit 102-A-2, only for a different residence and mortgagor?

A. Yes.

Q. Would you simply tell us the association involved and the date of the mortgage and the date of yours and the mortgagor?

A. The mortgagor was Kenneth W. Croner and Anne Croner, dated September 7, 1951, and recorded September 21, 1951, to the Detroit and Northern Savings & Loan Association, Liber 929, page 527, in the amount—

Q. You can skip the recording, if you will.

A. (Continuing): $8,000. Now, in this particular case we took an FHA. The house cost the man—he was a Fisher Body employee who was trying to build the house himself. I mean he did build—

Mr. Dexter (interposing): Your Honor, I think that is hearsay testimony.

A. Actually I waited on him.

* * * * *

(1096) Q. (By Mr. Van Zile): Just identify it. That is all we are doing at this time, Mr. DeYonker. I haven't offered them as yet, and I don't want to describe them at length. Just identify them. You just said you took a mortgage—

A. (Interposing): In the amount of $12,000, FHA type mortgage.

Q. Was that with the same mortgagor?

A. That was with the same mortgagor.

Q. That is with Detroit and Northern?

A. That is right.

Q. And that was taken on what date?

A. It was taken on August 26, 1952, recorded the following day.

Q. Is there a picture of the house?

A. There is.

Q. And does that truly and correctly represent the house as it was in 1952?

A. Yes.

Q. And in Exhibit 102-A-2 you have the mortgage of Detroit and Northern?

A. That is right.

Q. With those mortgagors?

A. Certified copy.

(1097) Q. And the certified copy of the discharge and a certified copy of your mortgage; is that right?

A. That is right.

Q. And are the legal descriptions the same?

A. Yes.

Q. Now, 102-A-3 is what? Would you simply identify it by the institution holding theoriginal mortgage and mortgagor?

A. Detroit Northern Savings & Loan Association, October 1950, and we took a mortgage September 27, 1952, in the amount of $7,300. The original mortgage was $2,500. It was discharged from Detroit Northern.

Q. And does that contain a pictureof the residence on that property?

A. That is right.

Q. And does that correctly represent the residence as it was in 1952?

A. It does.

Q. And do you have supporting that certified copies of the original mortgage?

A. Mortgage discharge and new mortgage.

Q. All certified?

A. That is right.

Q. And 102-A-4?

A. That was a mortgage of Russell Sobey to Detroit Northern, January 4, 1952, and financed as to Fred and Rosemarie Harper, (1098) June 21, 1952, $6,400.

Q. And that also contains a picture?

A. That is right.

Q. Of the residence?

A. That is right.

Q. And that correctly represents the residence as it was in '52?

A. That is right.

Q. And do you have certified copies of the mortgages supporting that?

A. We do.

Q. And the discharge. 102-A-5 is what?

A. That is a mortgage of Charles and Carrie Morton to the Detroit and Northern Savings Association, in the amount of $7,685, dated May 19, 1947, and that mortgage was discharged by them to us, and we took a new mortgage in Irvin and Thelma E. Dillard in the amount of $8,500.

Q. And you have pictures of that residence?

A. Yes.

Q. And does that correctly represent the residence as it was in 1952?

A. It does.

Q. And you have certified copies of the mortgages and of the discharge; is that correct?

A. That is right.

Q. And 102-A-6 is what?

(1099) A. That is property at 2429 Missouri of Louis C. and Marion Kamrath, the Detroit Northern, dated October 25, 1948, and we took a mortgage to Frank E. Pyscher on February 4, 1952, in the amount of $7,200.

Q. And again there is a picture of the residence, and does that correctly represent the residence as it was in 1952?

A. That is right.

Q. And you have certified copies of the mortgages and of the discharges supporting that?

A. Yes.

Q. 102-A-7 is what?

A. That was a mortgage, also Detroit Northern Savings & Loan Association, dated March 22, 1948, in the amount of $4,200, and we took a mortgage to a party by the name of Donald E. and Juanita Bunker in the amount of $8,400 on June 11, 1952.

Q. Do you have a picture of that residence?

A. We do.

Q. And does that correctly represent the residence as it was in 1952?

A. It does.

Q. And do you have certified copies of the mortgage and discharge supporting that?

A. Yes.

(1100) Q. 102-A-8 is what?

A. That is also a mortgage, Detroit and Northern Savings & Loan Association, on 752 Clinton Street, to Darwin W. Gatlin, in the amountof $6,635. We refinanced it to a Luther J. and Effe Fowler for $8,400, and we received a discharge of the Detroit and Northern Savings & Loan Association mortgage.

Q. Do you have a picture of that residence?

A. I do.

Q. Does it correctly represent the residence as it was in 1952, to your knowledge?

A. It does.

Q. And you have certified copies of the mortgage and of the discharge?

A. Yes, sir.

Q. 102-A-9 is what?

A. That was also a mortgage to the Detroit and Northern Savings & Loan Association of Claude L. Han-

ley, in the amount of $2,350. We made a mortgage to Norman L. and Ellen Jane Hallettt in the amount of $7,200.

Q. And you have a picture of that residence?

A. That is right.

Q. That correctly represents the residence as it was in 1952?

A. That is right.

Q. And do you have certified copies of the mortgage and of (1101) the discharge supporting it?

A. Yes.

Q. 102-A-10 is what?

A. That is a mortgage to the First Federal Savings & Loan Association by Francis H. and Beatrice R. Marien, dated August 23, 1950, in the amount of $7,400. That mortgage was discharged and we made a mortgage to Paul J. and Helen Warren, in the amount of $9,100, dated April 23, 1952.

Q. And you have a picture of that residence?

A. That is right.

Q. And does it correctly represent the residence as it was in 1952?

A. It does.

Q. And you have certified copies of the mortgage and of the discharge supporting it?

A. That is right.

Q. 102-A-11 is what?

A. This is a mortgage on which they paid us off. We had a mortgage of John S. and Winifred Wyman, dated June 20, 1952, in the amount of $13,000. That mortgage was discharged by us and a mortgage made to the First Federal Savings & Loan Association by Michael W. and Genevieve Evanoff, in the amount of $15,000.

Q. And that was in 1952?

A. That is right.

(1102) Q. And you have a picture of that residence?

A. We do.

Q. Does that correctly represent the residence as it was in 1952?

A. It does.

Q. And you have certified copies of the mortgage and the discharge supporting that, is that correct?

A. Yes, sir.

Q. 102-A-12 is what?

A. This is the mortgage that was with the Michigan National Bank of Cecil D. and Frances Sharpe, $3,000. It was refinanced by the First Federal Savings & Loan Association to the same party, that is, to Cecil D. There was a marriage there and they took out a mortgage there jointly of $5,000.

Q. And you have a picture of that residence?

A. That is right.

Q. Does it correctly represent it as it was in 1952, to your knowledge?

A. It does.

Q. And you have certified copies of the mortgage and the discharge supporting that?

A. That is right.

Q. 102-A-13 is what?

A. That was a mortgage that we had made to Charles E. and Dorothy E. Nemec, on May 3, 1952, in the amount of $8,800. Our mortgage was paid off and parties by the name of John M. and (1103) Ruth M. Priestley made a mortgage to the Detroit and Northern Savings & Loan Association on March 23, 1957, in the amount of $8,000.

Mr. Van Zile: That will have to be made a part of the separate record. I will offer it in that regard, except for our mortgage. which is in 1952.

Q. And you have a picture of that residence?

A. That is right.

Q. And does it correctly represent the residence as it was in 1952?

A. It does.

Q. And you have certified copies of the mortgage and the discharge?

A. That is right.

Q. 102-A-14 is what, Mr. DeYonker?

A. This was a mortgage that we had made to Joseph and Rosemarie McLone on April 16, 1952, in the amount of $10,200. Our mortgage was paid off by the Detroit and Northern Savings & Loan Association on December 13, 1955, in the amount of $9,750.

Mr. Van Zile: Again, we will offer the mortgage by the Detroit and Northern as a part of the separate record.

A. Yes, sir.

Q. And does it correctly represent the residence as it was in 1952?

(1104) A. Yes, sir.

Q. And do you have certified copies of the mortgage?

A. Yes, sir.

Q. Supporting it?

A. Yes, sir.

* * * * *

Q. * * * The next exhibit I believe is 102-A-15, and would you identify that, please?

A. That was the mortgage on 7502 Flushing Road by C. I. and Esther L. DeLaGrange, his wife, dated February 14, 1952, by the Michigan National Bank in the amount of $12,500. It was refinanced in August, 1952, to the same parties, for $13,500 by the Detroit and Northern Savings & Loan Association.

Q. And do you have a picture of that residence?

A. I do.

Q. And does it correctly represent the residence as it was in 1952?

A. That is right.

Q. And do you have certified copies of the mortgage and discharge supporting that?

A. That is right.

(1105) Q. And 102-A-16 is what, Mr. DeYonker?

A. That was a mortgage made by the Michigan National Bank to Allen C. and Patricia A. Porter on August 8, 1952, for $7,600, and that was refinanced—that was another one in 1954.

Q. All right. Just tell us what it was.

A. It was a mortgage made by the Detroit and Northern Savings & Loan Association in the amount of $4,500 to Catherine M. Birchmeier.

Q. And do you have a picture of that residence?

A. I do.

Q. Does it correctly represent the residence as it was in 1952, Mr. DeYonker, to your knowledge?

A. It does.

Q. And do you have certified copies of the mortgage and discharge supporting it?

A. Yes.

Q. And 102-A-17 is what?

A. That was a mortgage made by Paul and Ruby M. Sharpe to the Michigan National Bank on April 5, 1952, in the amount of $5,500. It was refinanced by the Detroit and Northern Savings & Loan Association to Clifford Lee and Dorothy M. Raymond in the amount of $6,705 on September 18, 1952.

Q. Do you have a picture of that residence?

A. I do.

(1106) Q. Does it correctly represent the residence as it was in 1952?

A. It does.

Q. And do you have certified copies of the mortgage and discharge supporting that?

A. I do.

Mr. Van Zile: We would like to offer Exhibits 102-A-1 through 17, with the exception of those mortgages which were dated after 1952; as to those we would request that they be made a part of the separate record, your Honor.

• • • • •

Mr. Dexter: Mr. Van Zile, for what purpose were these offered, showing the refinancing transactions?

(1107) Mr. Van Zile: This, to me, at least, is the essence of competition. I do not see how you can prove it more exactly, because it is the identical property, and in many cases under the identical mortgagors, and that is competition.

Mr. Dexter: Are these the complete transactions that they had in 1952?

Mr. Van Zile: No, they are not. I thought I asked Mr. DeYonker that. Are they all?

A. No, they are not.

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The Court: They may be received subject to the statement of Mr. Van Zile that those after December 31, 1952 are made a part of the separate record.

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(1111) *Cross Examination*

By Mr. Dexter:

Q. Now, Mr. DeYonker, in reference to samples of mortgages, Exhibits 101-A-1 through 101-A-10, do you know what portion of your total mortgages that sampling represents that you had in 1952?

A. Well, residential mortgages, we made about 2 million 200 thousand worth of mortgages. I haven't totaled these up, but it is not too hard, I guess.

Q. I think you have testified before that you had 360 mortgages?

A. Yes.

Q. And 20 of those were non-residential?

A. That's right.

Q. Do you know what amounts the 20 represented of your total mortgages?

A. Yes. They represent in around to half a million dollars. We had some church mortgages in there, and we had a few commercial mortgages. I don't remember the exact amounts of it, but as I say, the church mortgage also includes the rectory and maybe a sisters' house.

Q. So they were substantial in amount?

A. That's right.

Q. More substantial in amount than they were in number

A. That's right.

Q. Because they were larger mortgages?

(1112) A. That's right.

Q. Do you know what portion of your mortgages were the conventional mortgage?

A. Yes, I have the figure.

Q. Of course, we are directing our questions to the year 1952.

A. In 1952 we had 148 conventionals, 9 VA's and 180 FHA's.

Q. Now, what was the interest rate on the conventional mortgages?

A. They varied from 5 to 6 per cent.

Q. Was that interest rate higher than on the VA and FHA mortgages?

A. Yes.

Q. Would it have been more profitable to the bank to have made more conventional mortgages?

A. Well, you wouldn't have been able to get the mortgages because the down payments were so heavy, and as I said before—

Q. (Interposing): Would you answer my question, please?

A. Well, you asked me. I have to cover the subject.

Q. Was it more profitable, the conventional mortgage?

A. I will answer it this way, then: If you can get them; but they are not available, so you couldn't get them.

Q. That was because of the larger requirement of down payment?

A. That's right.

Q. Now, do you know what limit you had in reference to your conventional mortgages? I understand it was ten years. Is that right?

(1113) A. Ten years, with an extension of ten years if 40 per cent of the amount is amortized in the first ten years. So in reality, you have a 20-year mortgage. These mortgages that you have in there, some of those will run fourteen and fifteen years by the term of their monthly payment.

Q. You mean actually the conventional mortgage, under the National Banking Act, could run over ten years by its terms?

A. That's right. Oh, yes.

Do you want to refer here to the mortgage of Ra ney? This mortgage was made $7,500 at $65 a month. Now, if that mortgage would have paid $75 a month, it would have taken 11 years and 7 months for the

mortgage to pay. So this would figure somewhere around 14 years for this mortgage to amortize.

Q. But it was a ten-year loan, was it not?

A. It was drawn for ten years but not amortized for ten years.

Q. But wasn't there a large payment required at the last payment under the terms of the mortgage?

A. No.

Q. But it was only a ten-year mortgage?

A. That's right. It had the provisions that they could—and we told them that when we closed the loan—that at the end of the time, if they were satisfactory and 40 per cent was paid, we would give them an extension for the required years.

(1114) Q. That wasn't provided for in the mortgage?

A. No.

Q. You just told them that?

A. That's right.

Q. But they had no right for any such extension as a matter of contract right?

A. Well, because we explained to them what it was at the time; that we were limited to ten years, and we couldn't draw it for longer, but what we would do at the end of ten years—

Q. (Interposing): In other words, you made a verbal promise to them that you would extend it?

A. That's right.

Q. But if you did, you would have to make out a new mortgage?

A. No. We just make an extension agreement. All you do is— you don't require any mortgage and any recording. You can just make an extension agreement stating that the mortgage will be carried for so many more years—if it is four or five—and that the

monthly payment will be the same. Very simple operation.

Q. At the end of the ten-year period?

A. That's right.

Q. Is the extension agreement recorded?

A. No, it is not recorded. We give them one copy and we keep a copy.

Q. And these Exhibits 101-A-1 through 101-A-10 indicate the type (1115) of transaction that you have been testifying to?

A. That's right.

Q. Now, in reference to Exhibits 102-A-1 through 17 in regard to refinancing, as I understand it, you said that this did not include all of the refinancing?

A. No.

Q. Why did you pick these particular ones?

A. I tried to get the ones in 1952 because I thought that was the year that—

Q. (Interposing): Were these all that you had in 1952?

A. As far as I could determine, but we have them, of course, every month, or every two months.

Q. But as far as you could determine by searching your records, you had seventeen refinancing transactions in 1952?

A. That is true, but that doesn't represent all of them, because we would have a lot of mortgages that had been paid off prior to that time, see, so we wouldn't have any—that have been paid off.

Q. But this would be the refinancing in 1952?

A. Not all of it, no.

Q. Would you explain that, please?

A. Well, there may be mortgages that we made at this time but I couldn't produce the record because the mortgage had been paid off.

Q. In other words, do I understand that you do not have available (1116) in your records the applications and mortgages and other documents like you have in Exhibit 101-A-1 through 101-A-10 if the mortgage has been paid off since 1952?

A. Why, no. If a party pays us, they want their mortgage and note and their application and their appraisal and their attorney's opinion and their abstract, and they are entitled to get it. We can't keep it.

Q. You do not have those documents for mortgages that you took in 1952 that were paid off since that date?

A. That's right. There is no record. There is no benefit to us in those records. We give those back to those people. If they sign a mortgage or note, they are entitled to have those papers back.

Q. Is the basic information in those documents found any place else? Is the basic information in regard to the loan on those documents found any place else in your books and records?

A. No.

Q. Then in terms of Exhibits 101-A-1 through 101-A-10, would you explain how this sampling was taken?

A. Well, I explained that before. I told the girl that is in charge of the mortgage department I would like to have an FHA mortgage, a VA mortgage, and a conventional mortgage for each of the quarters. I gave her no instructions what to pick out. I said, "You just pick out one and let me look at them to see if they are right." Se did, and I accepted the (1117) one she took. Those are no different than any other mortgages we had.

Q. That is, you are talking in terms of the actual legal documents you use?

A. That's right. They are the same FHA forms, same VA forms, same percentage of loan to appraisal. They are all the same.

Q. Where did you get the information that appears on the first sheet of Exhibits 102-A-1 through 17 in regard to refinancing?

A. Where did I get the information?

Q. Yes.

A. Well, of course, if we take a mortgage, in our attorney's opinion it shows that there is an outsanding lien. W have our abstract examined, posted to date and examined. When we came to close the mortgage to Hoskins, we found that there was an outstanding mortgage to the First Federal Savings & Loan.

Q. Well, where did you get that information?

A. From the attorney's opinion.

Q. You mean that information that you have there in that exhibit was something copied from the attorney's opinion?

A. No, we still have this mortgage here.

Q. No. I am talking about the source of the information that you have written here.

A. Oh, sure. That attorney's opinion will disclose whether there are any outstanding liens on the property.

(1118) Q. You took the attorney's opinion as the authority for making up that information?

A. Sure. We took it from the abstract, but the attorney's opinion in—

* * * * *

Q. * * * I am just trying to find out from what source you got this information to compile—

A. (Interposing): From the abstract and the attorney's opinion.

* * * * *

Q. * * * I am talking about the information you have.

A. This old mortgage and the discharge.

Q. Let me ask you this: This is not a book of original entry, right?

A. That's right.

Q. And this is not a photostat of anything?

A. No.

Q. So that this information had to come from some other source and be recorded on this piece of paper.

A. O.K.

Q. I want to know from what source you got that information.

A. All right. We get the mortgage from the abstract and the (1119) attorney's opinion. Then we get this discharge from the recording—we make the recording of that discharge. We also record our own mortgage and have it in our portfolio. This discharge is recorded ourselves, so it comes back to us, and that is set up in our records.

Q. But this isn't a compilation of anything you have in reference to all your mortgages?

A. It is in every file.

Q. It is in every mortgage file?

A. Oh, sure. Not the sheet, but the information. Oh, sure.

Q. Then you copied this information out of your mortgage file?

A. Sure. That's right.

Q. That's what I was after. So that we could go to your mortgage file and get the same kind of information on any of your mortgages in 1952?

A. Sure. Oh, yes.

* * * * *

Re-direct Examination

By Mr. Van Zile:

Q. Now, Mr. DeYonker, one thing. You said, I believe, in answer to Mr. Dexter on Exhibits 101-A-1 through 10, that in the case of a paid-off mortgage, you wouldn't have any of this information.

Now, may I call your attention to Exhibit 101-A-1. (1120) Is that retained by your institution in your files as a part of your permanent records?

A. The ledger sheet is only one thing. The ledger sheet, of course, gives your FHA case number, it gives you the appraisal of the FHA, it gives you the terms of your mortgage, the type, and the monthly payment and the interest rate, and, of course, the name and the location of the property. (1121) These are permanent records. That is why we place all that on the one sheet. That is what we do keep, and we do have those ledger sheets which you can examine.

Q. In other words, that contains all the basic information, does it not?

A. That is right. The FHA cases, if there is any more information wanted, the appraisal can be obtained from the FHA.

A. And the balance of the description, as you said, you turned over to the mortgagor?

A. That is right.

Q. Upon payment. Now, cleaning up Exhibit 102-A-1, through 17, this information as to the mortgagor, mortgagee, the date of the mortgage, the recording date, the liber, the pages and the amount, all that appears upon the mortgage, does it not?

A. Well, it appears on the mortgage which is in the abstract, but—

Q. (Interposing): Does it not appear on the certified copy of the mortgage?

A. That is right.

Q. That is a part of the exhibit?

A. That is right, it does.

Q. The mortgagor's name, the amount, the mortgagee's name, right?

A. That is right.

Q. And that is true in the case of all of those. I mean, this information does appear upon the certified copies of the mortgages?

(1122) A. That is right.

Q. And of the discharge; is that right?

A. That is right.

* * * * *

BURK, CLARE R., was thereupon called as a witness on behalf of the Plaintiff, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

* * * * *

Q. * * * You are employed by the Michigan National Bank, Mr. Burk?

A. Yes, at the Battle Creek office.

Q. At the Battle Creek office?

A. Battle Creek office.

Q. And in what capacity?

A. Vice president.

Q. And what are your particular duties as a vice president?

A. Manager of the mortgage department,

Q. And how long have you held that position at the Battle Creek office?

A. I have been manager for five years, seven years. I have been (1123) in the department since 1946.

Q. And how long have you been employed by Michigan National Bank?

A. Thirty-one years.

Q. Thirty-one years?

A. Yes.

Q. That is by its predecessor, I assume?

A. Well, I beg your pardon. I started out with the City National Bank in 1927; then they changed their name to City National Bank and Trust Company. I do not know the date. And in 1938 it was changed to First National Bank, and in 1941 to the Michigan National Bank. Same bank all the way through.

Q. Just different names?

A. Just different names.

Q. And how long have you lived in Battle Creek?

A. Thirty years.

Q. Now, I believe you were present when Mr. DeYonker testified about the Flint office of the bank?

A. Yes.

Q. And you heard him describe the type of mortgages that his office was making in 1952?

A. I did.

Q. And in general terms a description of the terms of those mortgages, did you not?

A. Yes.

Q. Were there any differences so far as the types of mortgages were concerned and the method of loaning money on those (1124) mortgages in the Battle Creek office than in the Flint office? If so, would you explain them?

A. We made the FHA mortgages. We made GI mortgages, and we made conventional mortgages, and the general procedure was practically—I would say the same as the Flint office. Our requirements were the same.

Q. Now, you heard Mr. DeYonker testify as to the volume of mortgages which he was making in the Flint office. What volume of mortgages were you making and real estate mortgages were you making in the Battle Creek office?

A. In 1952 we made about, round figures, about 3 million a hundred thousand. A million six hundred thousand was FHA, a million four hundred thousand, round figures, was conventional, and about twenty thousand GI's, is all we made.

Q. And so far as the terms and the percentage to appraisal required on the down payment, etc., the amount of the loan and the down payment, and so forth, there were no essential differences in those various types from the Flint office?

A. Right.

Q. Now, I asked you to prepare also, Mr. Burk, samples of the mortgages from each quarter which Mr. DeYonker has testified to in the case of the Flint office. Did you do so?

A. Yes, I did.

Q. And I will show you Exhibit 101-B-1 through B-10 and ask you if those are of the same general nature as the exhibits (1125) previously testified to, only in the case of the Battle Creek office?

A. Yes.

Q. And you have, then, I note, four FHA mortgages, four regular mortgages, they each being from a different quarter of the year 1952?

A. Right.

Q. And two GI mortgages?

A. We only made three GI's that year of 1952.

Q. Now, in the case of your Exhibit 101-B-1, I do note that for the FHA mortgages you had a mortgage and a note for the first quarter, but you didn't have a copy of the mortgage and note for the other three quarters; is that correct?

A. That is correct.

Q. And why was that?

A. Well, I thought by making one full, complete record, that would give them an idea as to what we required for each application, because we require the same on every application.

Q. May I ask if the mortgage and note for the FHA varied during the balance of the year '52 or were the forms essentially the same?

A. The forms were essentially the same on FHA.

Q. And in the case of the regular or conventional mortgages, you have a mortgage and note for the first quarter but not for the other three?

(1126) A. Right.

Q. As to those three you have the application and ledger record; is that right?

A. Right.

Q. Does the same thing apply—I mean in the sense that the mortgage was essentially the same throughout the balance of the year in form?

A. It was.

Q. And the note?

A. Correct.

Q. And then you have one GI mortgage and note; is that correct?

A. Yes.

Q. And as to the other the application and ledger record?

A. I might make one comment, that our GI mortgages were made on the same form that we made our regulars. I think that was one thing that was different in the Flint office.

Q. In other words, you didn't make them on the government forms?

A. Right.

Q. Do you have the originals of those mortgage notes, applications and ledger records with you?

A. Yes, I do.

Q. They are here in court?

A. Right.

Q. Available for Mr. Dexter's inspection?

A. Yes.

Mr. Van Zile: We will offer Exhibits 101-B through B-10.

Mr. Dexter: Same objection, your Honor, as to 101-A-1 and 101-A-10, which were the same type of samples of mortgages introduced by Mr. DeYonker of the Flint office.

The Court: Received.

* * * * *

Q. (By Mr. Van Zile): May I ask whether those mortgages are representative of the other mortgages which you made of the various types during the year 1952, to your knowledge?

A. Yes.

Q. They are.

A. Best of my knowledge.

Q. Now, in the Battle Creek area what other associations, individuals or institutions are engaged in the loaning of money on real estate of the types included in our prior exhibit 101-B-1?

A. Security National Bank, Calhoun Federal Savings & Loan and People's Savings & Loan, formerly the Industrial Savings & Loan Association, Metropolitan Life Insurance Company, and the Equitable Life Insurance Company.

Q. Are there any other banks in Battle Creek?

A. No.

Q. And do the savings and loan associations in Battle Creek, (1128) and I am addressing myself to 1952, Mr. Burk, did they loan on all types of mortgages, FHA, VA and conventional, to your knowledge?

A. To the best of my knowledge, I know that the People's Savings & Loan, which was Industrial Savings & Loan in 1952, made all types of mortgages. Calhoun Federal Savings & Loan did not make FHA. If they did, it was a very, very few in that year.

Q. Now, I have asked you, as I asked Mr. DeYonker, to give us some examples of refinancing. Did you hear him testify as to what was meant by the term "refinancing"?

A. Yes.

Q. And does that agree with your understanding of it?

A. Yes.

Q. And dit it occur in Battle Creek in connection with the savings and loan associations?

A. It did.

Q. I will show you what we have had marked as Exhibits 102-B-1 through 11 and ask you simply to identify what the various exhibits are by the name of the mortgagor, mortgagee.

A. This is a mortgage by the Calhoun Federal Savings and Loan to Herman F. Capelle and Hazel, husband and wife, on lot No. 6 of the Phelps addition to the City of Battle Creek, amount of $2,000.

Q. And the date?

(1129) A And the date is September 15, 1947.

Q. And that is a certified copy of that mortgage?

A. By the Register of Deeds of Calhoun County.

Q. And the next?

A. Discharge of mortgage by the Calhoun Federal Savings and Loan on the 20th day of February, 1952, which is a certified copy by the Register of Deeds of Calhoun County.

Next we have a mortgage from the National Bank to Raymond G. Johnson and to Ella M. Johnson for $7,550, dated February 20, 1952, on lot No. 6 of the Phelps addition to Battle Creek.

Q. That is the same legal description as the prior mortgage?

A. Correct.

Q. And that is a certified mortgage, too?

A. That is a certified mortgage by the Register of Deeds.

Q. And 102-B-2?

A. That is a mortgage from the Industrial Savings & Loan Association, Battle Creek, to Fred M. Tessin, and Minnie C. Tessin. It is a very long—

Q. (Interposing): Don't go through—

A. It is a land and metes and bounds description. It is for $2,300. That was made on July 3, 1950, and is a certified copy.

Q. We can say that these are all certified copies, are they not?

A. Right. Then we show a discharge of mortgage by the Industrial (1130) Savings and Loan dated the 17th day of March, 1952.

And our next exhibit is a mortgage by the Michigan National Bank to Frederick G. Askew and Kathleen E.

Askew, on the same legal description, dated March 17, 1952, in the amount of $6,400.

Q. And 102-B-3?

A. Shows a mortgage from the Calhoun Federal Savings and Loan to Charles H. Van Sycle and Martha M. Van Sycle, on the 17th day of October, 1950. Legal description, Lot No. 41 in the south one-half of Lot No. 42 of the Chase.

I have a discharge of mortgage from the Calhoun Federal Savings & Loan Association dated—

Mr. Dexter (interposing): We can stipulate that those contain refinancings with savings and loan the same as the—

Mr. Van Zile (interposing): If we can do it, it would shorten things up a good deal, of course.

The Court: All right, state what you claim it contains, Mr. Van Zile.

Mr. Van Zile: All right, sir. Exhibit 102-B-1 through 11 contains refinancings of the same sort as 102-A-1 in the case of the Flint office. They contain certified copies of the mortgages and the discharges involved in each case.

Q. (By Mr. Van Zile): I think in three cases, Mr. Burk, they (1131) contain pictures, do they not, of the properties in question?

A. Right.

Q. Those being pictures which you say are representative of the property as it was in 1952?

A. Right. I know the property.

Q. You know the property in those cases?

A. Yes. And I have rechecked the property again about two weeks ago.

Q. Are there cases where there is a refinancing by the savings and loan from Michigan National Bank?

A. Right.

Mr. Van Zile: I will offer Exhibits 102-B-1 to 11.

Mr. Dexter: Same objection as to 102-A through 102-A-20.

The Court: The exhibits are received.

Q. (By Mr. Van Zile): Now, you made the statement as to the amount of your mortgages in 1952, Mr. Burk?

A. Yes.

Q. And what type of mortgage were you talking about in terms of residential or commercial? Were those your total mortgages?

A. One million four was the total of the conventional and commercial. I would say commercial would run in the neighborhood of around $350,000. Very small compared to—

Q. (Interposing): In other words, 350 thousand of your total (1132) mortgages in '52 were on commercial properties?

A. On commercial properties.

Q. And the balance on residential?

A. The balance on residential, correct.

Q. I asked you about Exhibit 101-B-1 through 101-B-10, and you said they were representative. How about the interest rates? Were they spelled out in the various mortgages or papers? Are they generally representative of the interest rates which you charged on those various types of mortgages in 1952?

A. We charged 5% on some, 5½% on some, and 6% on some.

Q. On what typ eof mortgage?

A. On residential and conventional.

Q. On the conventional—

A. (Interposing): Conventional was all five, five and a half, and six.

Q. And, of course, the VA and FHA interest rate was—

A. (Interposing): The VA was four per cent, and the FHA four and a quarter per cent.

Q. Do you know, Mr. Burk, what the average term of your conventional mortgages was in 1952?

A. The average would run about eight and a half years.

Q. And what was the average term of your FHA mortgages, if you know?

A. I do not know, except I took an average, an average payoff at that time around about ten years.

Q. Average payoff?

(1133) A. Yes. I can't tell you what the average age was. We made most of our mortgages 20 years. We made a few 15 years, not very many, but most of our mortgages at that time were 20-year.

Q. By payoff I understand you are talking about the same thing Mr. DeYonker was. I mean they normally turn over and—

A. (Interposing): Turn over faster than what the 30-day shows.

Q. And your VA mortgage, what was the term, if you remember, the average term in 1952?

A. About fifteen years.

Q. What was the ratio of the loan appraised value, if you recall, in the case of the three types in 1952?

A. We could loan up to one hundred per cent on VA.

Q. Do you remember what you loaned in practice, if there was a practice?

A. We only had three. One of them was a very small percentage, and the others were about—I think it would run about 95, 96 per cent.

Q. There wasn't much practice there.

A. There wasn't much practice there.

Q. And how about the FHA?

A. On the FHA we could loan 90% on the first seven and 85% on the next three thousand. And then on the next three thousand it was—let's say 24 hundred, plus sixty per cent of the next three. So on up the scale. We loaned according to that schedule, unless the people had more money than what the (1134) down payment should be.

Q. And how about your conventional?

A. We loaned all the way from 50% to 60%.

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Cross Examination

By Mr. Dexter:

Q. I have one question, and that is you deal mostly with builders on your mortgages?

A. No, we deal with all types of individuals and builders.

Q. The builders bring in a substantial amount of the business in 1952?

A. I would say that the real estate men bring in substantial business to us. That is where our business comes from.

• • • • •

BARNES, EDWIN, was thereupon called as a witness on behalf of the Plaintiff, and, having been duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Barnes, you are employed by Michigan National Bank?

(1135) A. That is correct.

Q. In what capacity?

A. As vice president in charge of mortgage loans in the Grand Rapids office.

Q. And how long have you held that position with Michigan National Bank?

A. In Grand Rapids since 1946.

Q. And where were you employed and by whom prior to that?

A. City National Bank in Battle Creek, the First National Bank in Battle Creek, and Michigan National Bank thereafter.

Q. And how long have you been in the banking business?

A. Since 1935.

Q. Now, the Grand Rapids office of Michigan National Bank does its mortgage loan business principally in what area?

A. Kent and the surrounding counties, Ottawa, Mecosta, surrounding counties.

Q. And is there any concentration of activity particularly in the Grand Rapids area?

A. Concentration is in the Grand Rapids area.

Q. You have heard Mr. DeYonker testify from the Flint office as to the types of mortgages which they

made in that area. Did you make the same types of mortgages in your area?

A. Yes.

Q. Did you follow substantially the same procedure as Mr. DeYonker did in the Flint office?

(1136) A. We did, with the exception of VA loans. I believe we were requiring in the Grand Rapids area a 10% down payment. We did not make any hundred per cent VA loans.

Q. You did make, however, all types of loans?

A. We made all types.

Q. Now, I also asked you to select mortgages from the various four quarters of 1952 of the various types, and did you do so?

A. Yes,

Q. And I will show you Exhibit 101-C-1 through 101-C-9 and ask you if those exhibits comprise that sampling?

A. Yes, they do.

Q. And we have what in that exhibit? Do we have four conventionals, one from each quarter?

A. No. I believe we have four FHA's. I believe there are three conventionals and a GI.

Q. And where you have not got a mortgage of a certain type, it indicates you did not make that type of a mortgage in that quarter; is that correct?

A. No, that is not correct. It means that we may have made mortgages in that quarter, but they were no longer active on our books. They had been paid.

Q. Now, do we have the same general setup as Mr. Burk? I mean, a mortgage and note and application and ledger sheet for the first quarter and then simply the application and ledger sheet for the other three

quarters—or the other quarters— (1136-A) or do we have the complete set as in the case of Mr. DeYonker?

A. I believe we have the complete set.

Q. So that your exhibit is substantially in the same form as Mr. DeYonker's?

A. That is correct.

(1137) Q. And would you say that these mortgages are representative as to form of the type of mortgages you were making in 1952 on residential properties?

A. Yes.

Mr. Van Zile: I will offer Exhibits 101-C-1 through 9.

Mr. Dexter: Same objection, your Honor, as 101-A-1 through 101-A-10.

The Court: Received.

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Q. (By Mr. Van Zile, continuing): Now, do you make mortgage loans in the Grand Rapids area on any particular type of residences, Mr. Barnes?

A. No, we make them on any residence that will qualify. In explaining that, loan the value.

Q. I see, and what do you mean by "loan the value"?

A. Where it does not exceed 60 per cent of the appraised value, on a conventional loan, nor does it exceed the amount on an FHA or VA loan.

Q. Other than that, you mortgage on all types of property?

A. That is correct.

(1138) Q. Do you know what your volume of mortgage loans on residential properties was in the year 1952?

A. Just under five million dollars.

Q. On residential?

A. On residential.

Q. I see. And do you know what percentage that was of your total loans?

A. I believe our total loans in 1952 were about five and one-half million.

Q. And by "loans" I am talking about mortgage loans, of course, real estate mortgage loans?

A. That is correct.

Q. Now, in the Grand Rapids area, what other institutions or associations or individuals loaned money on the security of real estate mortgages on residential property?

A. The Old Kent Bank, Peoples Bank, Central Bank, the Union Bank, Grand Rapids Mutual Federal Savings & Loan, Mutual Home, West Side Federal Savings & Loan, the insurance companies represented by certain mortgage brokers.

Q. And did you during the year 1952 have occasion to refinance properties on which the Savings and Loan Associations had mortgages, and did the refinance in cases where you had mortgages?

A. Yes, both on residential and commercial.

Q: I see. Both on residential and commercial?

Q. In Grand Rapids?

(1139) A. Correct.

Q. Now. I will show you Exhibits 102-C-1 through 8. You heard the other gentlemen talk about refinancing; is the the same sort of exhibit?

A. Yes.

Q. Would you describe 102-C-1 through 8, by identifying the mortgagor and the original mortgage?

Mr. Dexter: Again, if it is the same as the others—

Mr. Van Zile: It is.

Mr. Dexter: There is no reason to go through it, I do not believe.

(Thereupon three separate documents were marked for identification by the reporter as Plaintiff's Exhibit 102-C-10.)

Mr. Van Zile: I would also like to offer separately Exhibit 102-C-10; and would you explain what that is, since it is not a part of this bound volume?

A. It is a certified copy of the Register of Deeds of the mortgage extended by the bank to the Stiles Company, in the amount of $60,000 covering—do you want the description?

Q. Just enough of it to identify it.

((40) A. The south 30.67 feet of Lots 10 and 23, all of Lots 11, 12, 13, 24, 25, and 26, and the north 64 feet of Lots 27, 28, 29, 30, 31, and 32, of Block 4, Weston & Meigs Third Addition, together with that portion of the vacated alleys adjoining said described property.

Q. Are you familiar with that property, Mr. Barnes?

A. Yes.

Q. What is that property in Grand Rapids?

A. That is a supermarket building which is leased to Meyer Super Market.

Q. So that your bank had a mortgage on that property originally, is that right?

A. That is correct.

Q. And the next document is what?

A. It is a certified copy by the Register of Deeds of a discharge by the Michigan National Bank of our mortgage, such discharge being dated the 18th day of January, 1950.

Q. And that is the mortgage we first described, is that right?

A. That is correct.

Q. And what is the last paper?

A. It is a certified copy of a mortgage by the Register of Deeds running to the Mutual Home Federal Savings & Loan Association of Grand Rapids, covering the same described property, dated the 17th day of January, 1950, in the amount of $62,500.

Q. I see. Thank you. Now, you say there are other commercial (1141) mortgages in here which were taken over by the Savings & Loan Associations in Grand Rapids?

A. I believe the examples are where we have taken them from Savings and Loan Associations.

Q. I see, but they originally held them?

A. They originally held them.

Q. I see. We will offer Exhibits 102-C-1 through 10.

* * * * *

Mr. Dexter: * * * There is no objection to 102-C-10. No objection to 101-C-1 through 8, except—that is not the one— 102-A-1 through 17. We do not object to the proof of the particular transaction that they indicate.

The Court: They may be received.

Q. (By Mr. Van Zile, continuing): Now, Mr. Barnes, in the case of these mortgages we have been speaking of as represented and typified by Exhibits 101-C-1, et cetera, were these mortgages which you were making in 1952 to secure a past due indebtedness in any case, or were they (1142) for new funds?

A. In most instances, for new funds.

Q. Most of them were for new funds, not to secure a past due indebtedness?

A. No.

Q. And were the mortgages which you have been describing amortized on a monthly basis, that is, payable on monthly installments.

A. They were.

* * * * *

Mr. Van Zile: I forgot to ask one question of the preceding witness, if I might ask the one question.

Mr. DeYonker, I forgot to ask you whether any of these mortgage loans which you discussed were made to secure a pre-existing indebtedness to your bank, or were they for new funds.

Mr. DeYonker: They were made in part for new funds.

Mr. Van Zile: I see. They were not to secure pre-existing indebtedness?

Mr. DeYonker: Not with us, no.

Mr. Van Zile: May I ask Mr. Burk * * * (1143) the same question. Is the same thing true in the Battle Creek office?

Mr. Burk: I would say yes, they were for new funds.

Mr. Van Zile: They had no indebtedness to you prior to getting the mortgage loan?

Mr. Burk: No. You mean on those that we refinanced?

Mr. Van Zile: Yes.

Mr. Burk: No.

Mr. Klein: Other mortgages too.

Mr. Van Zile: Yes.

Mr. Klein: We are talking about all your mortgages.

Mr. Burk: Sometimes you refinance a mortgage of your own.

Mr. Van Zile: I understand that, but there was no pre-existing indebtedness?

Mr. Burk: No.

* * * * *

(1147) Lansing, Michigan,
Wednesday, July 16, 1958,
9:00 o'clock A. M.

NELLIGAN, JOHN B., was thereupon called as a witness on behalf of the Plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Nelligan, you are employed by the Michigan National Bank?

A. Yes.

Q. And what is your official title?

A. Vice president.

Q. And what are your duties?

A. I am in charge of various loan functions, including mortgage loans.

Q. And in what office of the Michigan National Bank?

A. At Lansing.

Q. Lansing, Michigan. Now, directing ourselves to the year (1148) 1952, was specifically to real estate mortgage loans, what was the area in which the Lansing office of Michigan National Bank loaned its money on the security of real estate mortgages?

A. Ingham, Clinton and Eaton counties, with the great preponderance in Ingham.

Q. And did you make loans on the security of real estate mortgages on residential properties in those counties?

A. Yes.

Q. And what was the amount of your residential mortgages in 1952, if you recall?

A. The loans made in that year were about a little less than three million dollars, two million something, as I remember.

Q. That is on residential properties?

A. That is residential.

Q. And what were your total loans, if you recall?

A. About four million four.

Q. And do you remember the number of loans that you made during that year?

A. Three hundred and forty or fifty.

Q. That is total loans of all types?

A. That is correct.

Q. And what number of those loans were on residential properties, if you recall?

(1149) A. About three hundred and twenty-five or thirty.

Q. Now, were you present in court when Mr. DeYonker of the Flint office testified?

A. Yes, I was.

Q. And you heard his testimony as to the manner and practice of their office in making these various types of real estate mortgage loans?

A. Yes.

Q. And did the practice in your offce, in the form of your mortgages, differ in any substantial way from the Flint office?

A. No, it was generally comparable all the way through.

Q. I see. Now, I have asked you to prepare, as I did with Mr. DeYonker, an exhibit showing the various types of mortgages which you made during the year 1952 by quarters; have you done so?

A. Yes.

Q. I will show you a bound volume which is entitled, "Lansing Office, Samples of Mortgages, 1952,"

Exhibits 101-D-1 through 101-D-11. Is that a set of exhibits you prepared in that connection?

A. Yes, we had these samples pulled for each quarter, and they run from 1 to 11.

Q. How were they selected?

A. There was one selected from each quarter. There were four (1150) in a row here, one of each quarter of the year, FHA, and then four, five that are conventional selected in a similar manner, and two GI.

Q. Were they selected at random, or what?

A. At random.

Q. You have examined those, have you not?

A. Yes.

Q. And would you say that they were representative of the other mortgages which you made during 1952 in the quarter involved?

A. Yes, they are.

Q. Now, speaking of terms of your mortgages and your regular or conventional real estate mortgages on residential properties, what was the average or usual term of those mortgages?

A. On conventional mortgages, you mean?

Q. Yes.

A. Usually ten years.

Q. And how were they amortized?

A. On a monthly basis.

Q. At what rate, if you recall?

A. You mean interest rate?

Q. Yes.

A. The interest rate usually is five at that time on a conventional mortgage.

Q. And what was the percentage of the loan to the appraised value generally?

(1151) A. It had to be under sixty per cent but was very close to that figure.

Q. Now, in connection with the FHA mortgages, what was the interest there?

A. The interest rate there that year was four and a quarter.

Q. And what was the usual term of that type mortgage in the Lansing office?

A. Practically all of ours were twenty years.

Q. And what was the percentage of loan to appraised value?

A. It would run roughly from eighty to ninety per cent.

Q. You heard Mr. DeYonker testify about the schedule of percentage of loan to appraised value that was permissible for FHA mortgages?

A. Yes, I did.

Q. Did you follow that schedule, generally speaking?

A. Yes. We might have been a few per cent less than that. We didn't go to the extreme limit on each case.

Q. And your VA mortgages, the interest rate was four per cent?

A. Four per cent.

Q. And what was the average term?

A. Both GI's, the only two we made that year, were 20-year.

Q. And what was the percentage of the loan to the appraised value in those cases usually?

A. Ours usually ran a little less than ninety per cent—ninety-five per cent. I would say about ninety to ninety-five (1152) per cent.

Mr. Van Zile: I would like to offer Plaintiff's Exhibits 101-D-1 through 101-D-11.

Mr. Dexter: No objection except the same as Exhibits 101-A-1 through 101-A-10.

The Court: Received.

Q. (By Mr. Van Zile): Were the mortgage loans which you made on residential properties made to secure a pre-existing indebtedness, or were they for new funds?

A. No. Well, there might be a few exceptions, but there wouldn't be more than one or two cases in the year. Most of them were for new funds?

Q. Did you loan money in the Lansing area on any particular class of property?

A. No.

Q. On what classes of property did you loan money?

A. All classes.

Q. And did you loan to any particular class of mortgagor?

A. No. It was the run of the mine, as they came.

Q. Did you ever make conventional mortgage loans on properties which did not qualify for an FHA mortgage?

A. Yes, we have.

Q. Now, what other institutions, firms or individuals were loaning money on the security of residential real estate in the Lansing area?

(1153) A. American State Bank, the Bank of Lansing, East Lansing State Bank, the Union Building & Loan, the Lansing Savings & Loan, the Capitol Savings & Loan, East Lansing Savings & Loan.

Q. Were they lending money in that fashion on the same types of property and the same classes of mortgagor?

A. Very much the same.

Q. Did you during 1952 refinance mortgages held by one of the savings and loan associations, and did they in turn refinance mortgages on properties which you held a mortgage on?

A. Yes. There are always a certain number.

Q. I have asked you to prepare an exhibit showing such refinancings. Have you done so?

A. Yes.

Q. I will show you what has been marked Lansing Office, Michigan National Bank Exhibits 102-D-1 through 12, refinancings, and marked in that fashion. Is that the bound volume showing such refinancings?

A. Yes, it is.

Q. Would you explain to the Court or identify the refinancings involved in that set of exhibits, Mr. Nelligan?

A. Well, we searched through our records and we found that from the original transcript of the mortgages recorded in Ingham County in that year, we had a number of examples of mortgages that were given to —for instance, the first one was (1154) given by Mid-State Builders to the Union Building & Loan, and at a later date discharged, and remortgaged to the Michigan National Bank.

Q. Now, what was the date of that mortgage to Mid-State Builders?

A. The date of this mortgage was June 12, 1952.

Q. And what amount?

A. $6,000.

Q. And you refinanced that mortgage when?

A. On November 8, 1952.

Q. In what amount?

A. $9,400.

Q. And was that on the same property?

A. It is on the same property, lot 10 of Prairie Village.

Q. Do you know who Mid-State Builders, Incorporated, is?

A. Yes.

Q. What are they?

A. They are a concern who do building around town, residential building.

Q. And the mortgage was to that concern?

A. Yes, sir.

Q. And you have copies in each instance of the mortgage and discharge?

A. That is correct; these are certified copies.

Q. And what is your second example?

A. The second example is Clark Ackley and wife, who gave a (1155) mortgage to East Lansing Building & Loan—

* * * * *

Q. Just, if you will, hurriedly tell us the original mortgagor and mortgagee?

A. The second is Clark Ackley and wife, who made a mortgage to the East Lansing Building & Loan on May 16, 1947, in the amount of $18,000, and a mortgage was made to the Michigan National Bank on February 6, 1952, in the amount of $15,000.

Q. By whom?

A. By Clark Ackley and wife, the same parties.

Q. Third?

A. The third one is Straffin, who gave a mortgage in 1948 to the Michigan National Bank, and it was discharged in March of 1952, and sold, apparently, to MacLeod, who, in turn, mortgaged it to the East Lansing Savings & Loan. The first mortgage was $9,600, and the second mortgage $10,000.

(1156) Q. And the fourth?

A. Mid-State Builders, who gave a mortgage on March 19, 1952 to the Union Bulding & Loan, in the amount of $6,000, and re-mortgaged to the Michigan National Bank for $9,400 in September, 1952, by the purchaser, Mr. Merwin.

Q. And the fifth?

A. The fifth is a mortgage to the Mid-State Builders, given by Mid-State Builders to the Union Building & Loan in March of 1952 for $6,000, and sold to Easterbrook and wife, who mortgaged to Michigan National Bank in October, or, September 29, 1952, for $8,100. Do you want me to go on?

Q. Yes, if you will.

A. The sixth is Carr and wife, who gave a mortgage in June of 1950 to the Michigan National Bank for $8,600, on FHA. It was later sold to Stockton and wife, who gave a mortgage tothe East Lansing Building & Loan in January, 1952, for $9,250.

The seventh is Seeds and wife, who gave a mortgage in 1951 to the Capitol Savings & Loan in the amount of $5,000. It was sold to Zindler and wife, who, in turn, in July of 1952, gave a mortgage to the Michigan National Bank for $8,500.

The eighth is Lewis and wife, who gave a mortgage in 1951 to the Michigan National Bank for $8,000 on FHA; in turn, it was sold to McCanna and wife in January, (1157) 1953. The mortgage was for $5,000 to the Capitol Savings & Loan.

The ninth is Hakes and wife, who, in 1946 gave a mortgage of $600 to the Michigan National Bank, and it was discharged in March, 1952, and re-mortgaged in 1956 to the Union Building & Loan for $3,500.

The tenth is Barndt and wife, to the East Lansing Savings & Loan, in March of 1947, a loan of $4,500. It was sold to Schmidt and wife, who, in turn, gave a mortgage in 1952 to the Michigan National Bank for $2,500.

The eleventh is Pastras and wife, who mortgaged to the Michigan National Bank in May of 1950, in the amount of $8,500 on FHA. It was discharged January

30, 1952. In turn, they gave a mortgage in November of 1952 to the Capitol Savings & Loan for $11,000.

The twelfth is Claus and wife, who in 1950 gave a mortgage to the Capitol Savings & Loan for $6,000, on FHA, for twenty-five years. In November of 1952 it apparently was purchased by Sundeen and wife, who mortgaged to the Michigan National Bank for $7,500, FHA.

Mr. Van Zile: I think there is one mortgage in there that is dated after 1952, and I offer the Exhibits 102-B-1 through 12, with the exception of that one subsequent to 1952. As to that, I request that it be made a part of the separate record.

(1158) Mr. Dexter: The summary sheets are just a matter of convenience in front of it; that is not a part of the exhibit?

Mr. Van Zile: That is not a part of the exhibit.

Mr. Dexter: No objection.

The Court: It may be received on the conditions stated by Mr. Van Zile.

Q. (By Mr. Van Zile): One other thing. In explaining Exhibit 102-D-1 through 12, I notice you have on the side of each mortgage in ink page 246, line 45, for instance, on Exhibit 102-D-1, and you have like notations as you go along. What is the reason?

A. That is the page and line of the large transcript that we made up of all of the transactions for 1952 recordings.

Q. Exhibit 65?

A. That is correct. I understood it was that number.

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Cross Examination

By Mr. Dexter:

Q. With reference to the FHA mortgages, was there any additional charge other than the four and a quarter per cent interest rate?

A. Well, there was a charge for the FHA appraisal fee which went to the FHA.

(1159) Q. Were there any additional charges other than that?

A. At that time there were no other additional charges that I remember. There was a charge for construction, a fee for construction, but not for a loan.

Q. Was there an insurance charge?

A. Oh, yes.

Q. That would be part of the money required to be paid regularly by the purchaser?

A. That is correct, a half of one per cent insurance charge.

Q. That would be true for all FHA mortgages in 1952?

A. That is correct.

* * * * *

Re-direct Examination

By Mr. Van Zile:

Q. Would you explain just very briefly that insurance fund payment?

A. Well, the borrower is required to pay a half of one per cent, which added to the four and a quarter makes the total cost for the mortgage four and three-quarters. That fee is remitted by us to the Federal Housing Administration as an insurance fee for insuring and guaranteeing the loan.

Q. And what happens to that fund that is so established?

A. It is built up as an insurance fund.

(1160) Q. Is it ever returned to the mortgagor?

A. I understand under part of the statutes it can be returned, but it hasn't been so far.

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TOLHURST, LEON G., was thereupon called as a witness on behalf of the Plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Your name?

A. Leon G. Tolhurst.

Q. Mr. Tolhurst, you are employed by the Michigan National Bank?

A. I am.

Q. In what capacity?

A. Vice-President.

Q. And what are your duties?

A. Among other duties, responsible for the mortgage loans in the Marshall office.

Q. In the Marshall office?

A. That is right.

Q. And how long have you held that position?

(1161) A. Since 1941.

Q. And where were you previously employed?

A. At the Hastings Marshall Bank.

Q. Now, Mr. Tolhurst, how large a community is Marshall, Michigan?

A. Approximately 6,000. The directory prepared by R. L. Polk lists 5,770.

Q. And what sort of a community is Marshall?

A. It is a county seat, center of farming industry, and we have considerable other manufacturing industries also.

Q. Is it primarily a farming community, though?

A. I wouldn't say primarily. I would say a substantial portion of it is farming community.

Q. Now, does your office loan money on the security of real estate mortgages on residential properties?

A. We do.

Q. And I am directing my questions to 1952, Mr. Tolhurst. In what area did you loan money in that fashion in 1952?

A. In Calhoun County, a few loans were made in Olivet, which is over in Eaton County, and we have mortgage loans, a limited number, in Coldwater, which is in Branch County, but, however, in 1952 I do not think we had any.

Q. Now, what was the volume of your mortgage loans on residential properties, if you recall it, in 1952?

A. Well, I did not segregate those because the so-called (1162) conventional mortgages, there might be a few farm mortgages. We make farm mortgages. The farm mortgages in number and volume are much less than the residential.

Q. Well, including the farm mortgages with your residential mortgages, do you recall what your volume was in 1952?

A. FHA mortgages, there were thirty, for a volume of $224,000. Conventional mortgages, I believe there were 51, and the volume, $226,000.

Q. Did you make any VA mortgages?

A. We made one.

Q. And did you make any commercial mortgages?

A. We had three.

Q. What was the amount of your commercial mortgages, if you recall it?

A. $30,000, I believe.

Q. Now, you heard Mr. DeYonker of the Flint office testify previously, did you not, as to the practice of his office in making mortgages of various types, and the procedures followed?

A. I did.

Q. And was your practice at the Marshall office substantially the same as his?

A. It was.

Q. Speaking of terms, you made all three types of mortgages on residential properties, right?

A. That's right.

(1163) Q. As to the conventional mortgages, what was the average term or generally the term of your conventional mortgages on residential properties?

A. Ten years or less.

Q. And what was the usual interest rate?

A. There were a few at five per cent. More of the smaller mortgages were at six per cent.

Q. And what was the percentage of the loan to the appraised value usually?

A. Sixty per cent or less.

Q. Now, the FHA mortgage, the interest rate was four and one-fourth per cent. What was the usual term of those mortgages?

A. Twenty years.

Q. And what was the percentage of the loan to the appraised value usually?

A. We made those approximately ninety per cent.

Q. And on your VA's, the interest rate was four per cent, right?

A. That's right.

Q. And what was the term of that one mortgage?

A. Eighteen years.

Q. And you have that VA mortgage, the only one, in our next exhibit, is that right, 101-E-1 through 8?

A. Yes.

Q. Now, did you also prepare, as the others have, a sample of your mortgages made during 1952, Mr. Tolhurst?

(1164) I did.

Q. And I will show you Exhibits 101-E-1 through E-8, and ask you if that is the sampling which you prepared?

A. It is.

Q. And what do those exhibits comprise? I mean just in terms of the types of mortgages.

A. There were four FHA mortgages, one from each quarter. There were three conventional and one VA.

Q. Now, were those mortgages representative of the other mortgages which you made during the year?

A. They are in the size of the mortgage. Our office being in a smaller community, we make more mortgages of less than five thousand. I asked the secretary to select from each quarter mortgages of more than five thousand. She came up with one by which the terms of payment were to pay semi-annually, which is an exception.

Q. That is not usual?

A. Not usual. For residential property that is not usual.

Q. How are your mortgages on residential properties usually amortized?

A. They are usually amortized monthly.

Q. But one of these is amortized semi-annually?

A. That's right.

Q. Now, on what classes of property did you loan money in Marshall on residential properties?

(1165) A. All classes.

Q. And to what class of people?

A. All classes of people in the community.

Q. What other people were loaning money on the security of residential properties—real estate mortgages on residential properties in Marshall in 1952?

A. Marshall Savings and Loan Association and some individuals.

Mr. Van Zile: I would like to offer 101-E-1 through 101-E-8.

Mr. Dexter: No objection except that as to 101-A-1 through 101-A-10.

The Court: Received.

Q. (By Mr. Van Zile): Were there any refinancings as between your bank and Marshall Savings & Loan in 1952?

A. We found one instance.

Q. I will show you what has been marked Exhibits 102-E-1 through 18. Is that refinancing contained in those exhibits?

A. It is.

Q. And would you identify that one resident? What is the number of that exhibit first, Mr. Tolhurst?

A. It would be 102-E-1.

Q. It has already been marked. What are those papers?

A. This is a mortgage dated January 26, 1952, William Waidlech and Mrs. Waidlech, for $7,000.

Q. And who is the mortgagee?

(1166) A. Marshall Savings & Loan Association.

Q. What is the next exhibit?

A. The next exhibit is a mortgage that was made by the same parties, dated March 17, 1947, to the Michigan

National Bank, in the amount of $6,900. That was a VA mortgage.

Q. Both of those are certified copies, are they not?

A. They are.

Q. So that indicates that that mortgage was a mortgage which you held which was refinanced by Marshall Savings & Loan?

A. It was.

Q. And that was the only one you could find in 19—

A. (Interposing): That was the only one I could find in that year.

Mr. Van Zile: I would like to offer Exhibit 102-A-1.

Mr. Dexter: No objection.

Q. Now, I have also asked you, Mr. Tolhurst, to assemble mortgages made in 1952 by your bank and by the Marshall Savings & Loan Association showing the types of properties on which you were loaning. Have you done that?

A. I have.

Q. And how have you arranged those in Exhibits 102-E-2 through 18? Would you explain that? First explain it generally. What have you done?

A. I have arranged the first one by one loan made by one (1167) institution, giving a picture of the property, and then—

Q. (Interposing): Certified copy of the mortgage?

A. Certified copy of the mortgage. Then perhaps a picture of another property close to it or of a similar nature made either by the Michigan National Bank or the Marshall Savings & Loan Association.

Q. Well, now, would you take those up and explain as briefly as you can, first of all, the pictures were taken by whom?

A. I took the pictures.

Q. And when did you take the pictures?

A. Recently, within two months.

Q. Have you been familiar with the properties in the past?

A. I have been, and I am. I was at the time and still am familiar with it.

Q. Do the pictures substantially represent the houses as they were in 1952 of your own knowledge?

A. They do.

Q. All right, would you briefly explain the exhibits, and as you go along would you identify the exhibits?

Mr. Dexter: Your Honor, I believe that the testimony has been very clear that they loan on all types of properties, residential, and I think the Savings and Loan testimony was that, and we will agree that that happened. It seems to me that this at best is cumulative and detail that is subject to some evidentiary objections.

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(1168) Q. (By Mr. Van Zile): Would you identify those exhibits and state the basis of comparison or whatever reason there may be for having assembled the particular exhibit?

A. The first one represents a mortgage loan of $4,000 given by Homer E. Devenney and Mrs. Devenney, Marshall Savings & Loan Association. This property is located just outside the city limits, north city limits, of Marshall, North Marshall Avenue. The certified mortgage is dated May 24, 1952.

Q. And those are Plaintiff's Exhibits 102-A-2, is that right?

A. That is right. The next one is a loan made by the Michigan National Bank, Stanley Schmanske and Mrs. Schmanske, in the amount of $3,000. This prop-

erty is probably three or four blocks from the previous one.

Q. From the previous exhibit, and that is Exhibit 102-A-12, right?

A. Correct.

Q. And a certified copy of the mortgage?

A. The next one is a loan dated April 16, 1952, in the amount of $3,800 given by Willie Faurot; and Mrs. Faurot, Marshall Savings & Loan Association, located 405 South Jefferson (1169) Avenue.

Q. And that is exhibit what? Will you state the exhibit number?

A. 102-E-3.

Q. Next?

A. The next is a loan dated February 26, 1952, given by Ivan D. Tenney in the amount of $3,500 to the Michigan National Bank, and is located at 892 East Michigan Avenue.

Q. And is it near the property in the previous exhibit, or is there any connection?

A. It is not near. It is not far away, because the community is not large, but it shows the size of house. That was the purpose of that.

Q. All right, will you go on. That is Exhibit 102-E-13.

A. E-13, correct. The next exhibit represents a loan of $5,000, dated November 7, 1952, made to Bernard L. Hopkins and Mrs. Hopkins, by the Marshall Savings & Loan Association. That represents one of the older houses.

Q. And what is the exhibit number?

A. 102-E-4.

Q. And what is the next exhibit?

A. The next exhibit is a loan dated May 17, 1952, given by J. Phillip Roberts and Mrs. Roberts in the

amount of $4,000 to the Michigan National Bank. It is located at 315 North Madison Street. It is a sample of one of the older houses in Marshall, well preserved.

(1170) Q. And that is the reason why it connects up with the previous exhibit?

A. Correct.

Q. What is the next exhibit—what is the exhibit number of that?

A. 102-E-11.

Q. All right.

A. The next exhibit represents a mortgage dated October 17, 1952, in the amount of $5,500 by Ray E. Waters and Mrs. Waters to the Marshall Savings & Loan Association. This is located at 808 West Michigan Avenue. This is primarily residential. However, on the same lot is located a body shop.

Q. And what is the number of that?

A. 102-E-9.

Q. What is your next exhibit?

A. The next exhibit is a loan dated June 14, 1952, in the amount of $4,550 to Robert K. Howard and Mrs. Howard by the Michigan National Bank. This is located outside the city limits on west US-12. It represents the residence and adjacent to it is a motel.

Q. Does the mortgage cover the motel?

A. The mortgage does not cover all the motel.

Q. And what is the purpose of that exhibit?

A. To show that we make loans on a residence that has a business connection with it as well as the previous one which showed (1171) the residence having a body shop on the property.

Q. Which was by Marshall Savings?

A. That is right.

Q. Would you go on to the next exhibit?

A. You want the number of this exhibit?

Q. Yes, please.

A. 102-E-10. That is the Howard property.

The next one is a loan dated December 5, 1952, to Hugh M. Miller and Mrs. Miller in the amount of $3,300 by the Marshall Savings & Loan Association, located at 120 West Spruce Street.

Q. And what is the number of that exhibit?

A. 102-E-6.

Q. And the next exhibit?

A. Is a loan dated December 2, 1952, by Vaughn L. Sink and Mrs. Sink, in the amount of $5,500, by the Marshall Savings & Loan Association, located at 120 Hart Street.

Q. And what is the number of that?

A. That is 102-E-7.

Q. All right. And the next?

A. I might add at the present time we have a mortgage on that made subsequent to 1952.

Mr. Van Zile: May I ask that that be made a part of the separate record, that statement?

The Court: All right.

(1172) Q. (By Mr. Van Zile): Would you go ahead with the next exhibit?

A. This is a loan made October 11, 1952, by Douglas Dwayne Van Sickle and Mrs. Van Sickle, in the amount of $2,200, by the Marshall Savings & Loan Association, located 842 East Green Street, Exhibit No. 102-E-8.

The next one, the loan is dated April 12, 1952, to Aldwin H. Ludy, in the amountof $4,000, by the Marshall Savings & Loan Association. Her property is located perhaps a mile or a mile and a half outside the city limits of Marshall. Do you want the number of that exhibit?

Q. Yes, please.

A. 102-E-5.

The next is a loan dated February 15, 1952, to Charles H. and Mrs. Tidey, in the amount of $8,000, by the Michigan National Bank, Marshall, Michigan.

Q. The number of the exhibit?

A. The number of the exhibit is 102-E-14.

Q. Where is that property located?

A. This is perhaps a mile and a half outside the city limits, not in the same direction as the other, but it illustrates that we both make loans on property outside the city limits.

Q. The next exhibit?

A. A loan dated December 22, 1952, to Raymond N. Weber and Mrs. Weber, in the amount of $8,600, by the Michigan National (1173) Bank, located 211 East Drive, Marshall, Exhibit No. 102-E-15. This is an FHA loan.

The next loan is dated March 20, 1952, to William R. and Mrs. Youngdahl, $12,500, Michigan National Bank, located 108 North Kalamazoo Avenue at the approximate intersection of US-12 and US-27.

Q. And is that an older house?

A. It is one of the older houses, well preserved, in good shape; Exhibit No. 102-E-16.

The next one is a loan dated April 12, 1952, to Benoit M. and Mrs. Singleton, in the amount of $6,800, by the Marshall Savings & Loan Association. This property is located on the shores of Lyon Lake, approximately six miles south of Marshall, Exhibit No. 102-E-17.

The next loan, dated September 10, 1952, to George C. and Mrs. Walbeck; the amount was $5,000 to Marshall Savings & Loan Association, at 427 North Mulberry Street. That is exhibit No. 102-E-18.

Mr. Van Zile: I will offer Exhibits 102-E-2 through 18.

Mr. Dexter: I understand it is still the understanding of the Court and plaintiff that we have a continuing

objection as to the materiality of anything in reference to the Building and Loan people.

The Court: I think that is the general statement.

* * * * *

(1174) Q. (By Mr. Van Zile, continuing): State whether any of your mortgage loans on residential properties were to secure a pre-existing indebtedness?

A. They were not.

* * * * *

BROWN, HARRY A., was thereupon called as a witness on behalf of the Plaintiff herein, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Brown, by whom are you employed?

A. I am employed by the Michigan National Bank, Port Huron office.

(1175) Q. And in what capacity?

A. I am vice-president in charge of the mortgage loan department.

Q. And how long have you held that position?

A. I have been in the mortgage loan department twenty years; I have been vice-president for the past five years. Prior to that time, I was assistant vice-president; and I started originally with the First National Bank of Port Huron, up until the time the bank was taken over by the Michigan National in 1941, I believe it was.

Q. And how long have you lived in Port Huron?

A. All my life, sir.

Q. And how large is Port Huron?

A. Port Huron is about 37,000 population.

Q. Now, do you make loans on the security of real estate mortgages on residential properties in Port Huron?

A. We do.

Q. In what area do you make such loans?

A. We make mortgage loans in St. Clair County chiefly, however we do make a few in Sanilac County and Huron County.

Q. Do you recall the volume of your mortgage business on residential properties in 1952?

A. Yes, I do. We made approximately $2,700,000 worth of mortgage loans on residential properties in 1952, for a total of 470 loans.

Q. What were your total mortgage loans?

(1176) A. Total mortgage loans in 1952 were about three million two, so our commercial loans would be about five hundred thousand dollars, 27 loans I think were commercial.

Q. What types of mortgage loans did you make on residential properties, Mr. Brown?

A. We made residential loans on all types of property.

Q. And by "types," what I really meant, do you make the FHA type?

A. Yes, we make FHA, GI and conventional loans.

Q. All three types?

A. Yes.

Q. And that was true in 1952?

A. Yes.

Q. All my questions are directed to 1952?

A. I understand.

Q. Do you recall the distribution between those types of mortgages so far as your residential mortgages were concerned?

A. I would say about 70 per cent were conventionals, about 25 per cent were FHA, and about 5 per cent VA.

Q. Now, you heard Mr. DeYonker of the Flint office testify, did you not?

A. I did.

Q. Were your practices in making such loans substantially similar to his?

A. They were.

Q. And turning to the terms of these various types of mortgages (1177) on residential properties, what was the average term, usual term of your conventional mortgages?

A. Our conventional mortgages were generally ten year loans; we made a few under ten years, but the majority were ten year loans.

Q. And what were your interest rates in 1952?

A. Six per cent.

Q. And how were your loans amortized?

A. They were all amortized on a monthly payment basis.

Q. And at what percentage, if you recall?

A. You mean percentage of loan to value?

Q. No, I mean how did they amortize?

A. Oh, one per cent per month; in other words, on a $10,000 loan our payment would be $100 a month; it would take about eleven years, perhaps, to pay the loan off, but the maturity was set at ten years; it could be extended.

Q. Did you in fact extend in 1952, or prior thereto, on occasions?

A. We did on occasions.

(1178) Q. Now, what was the percentage of the loan to appraised value usually in the case of your conventionals?

A. We loaned 60% of the appraised value in most cases.

Q. And on your VA what was your usual term?

A. Well, VA loans were generally all 20-year loans.

Q. And the percentage of loan to appraised value, do you recall that?

A. We loaned at one hundred per cent of the appraised value. In the majority of cases I would say we required 10% down, a 90% loan.

Q. And on your FHA mortgages what was the usual terms?

A. FHA loans were 20-year loans. We could go 25, but we had about 20.

The Court: Before you leave that, it has been said here by this witness and some others that these mortgages could be extended. Is that just something that is in the mind of the banker, or is it something in these Federal statutes that says that they may renew or extend?

Mr. Van Zile: My understanding is that the law provides for what they call 40% amortization over the first ten-year period. In other words, it requires a payment down to 60% in ten years. If that is paid down or more, then they can extend on the same property for an additional period.

The Court: That is in the statute somewhere?

Mr. Van Zile: Yes, it is. That is my understanding. (1179) I don't know that the extension is, your Honor, but they are permitted to.

The Court: Who permits them? That is what I want to know. You kept saying that may be done. Is that something in the law that says that? They could issue a new mortgage. I realize that.

A. The law provides that.

Q. (By Mr. Van Zile): The law provides that, Mr. Brown?

The Court: It could be checked later as far as the express provisions are concerned.

Q. (By Mr. Van Zile): Now, on the FHA mortgages what was the percentage of the loan to appraised value usually?

A. We loaned as high as FHA would approve, generally 85% of the appraised value.

Q. And how were your loans amortized on residential properties? On a monthly basis?

A. They were all amortized on a monthly basis, yes, sir.

Q. Were any of them made to secure a pre-existing indebtedness?

A. No, sir.

Q. They were all for new funds?

A. They were all for new funds.

Q. And we have covered the area of your loaning, have we not?

A. Yes, sir.

Q. And to what classes of people in the Port Huron area did you loan money?

(1180) A. We made no distinction. We loaned to anyone who would come to our office and make application.

Q. And did you loan on any particular class of property?

A. No, providing the property was a residential property and in our loaning area.

Q. Have you made loans on types of property that did not qualify for FHA?

A. Yes, sir, we have. In some areas the FHA will not approve the area; therefore we would make conventional loans to those people.

Q. I have asked you as I did Mr. DeYonker and the other witnesses to prepare a sample of the mortgages which you made in 1952, Mr. Brown. Have you done so?

A. That I have done.

Q. Is this the volume containing Exhibits 101-F-1 through 101-F-12?

A. This is the volume, yes, sir.

Q. And just state briefly what that contains, will you please?

A. This contains an FHA mortgage made in 1952 for each of the quarters, for each quarter of the year, a VA loan made in each quarter of the year 1952, and a conventional loan made each quarter of 1952.

Q. Now, are these mortgages representative of the other mortgages which you were making during the year in the quarter from which they are selected?

A. Yes, sir, I would say they are. They are typical mortgages taken (1181) directly from our files.

Mr. Van Zile: I will offer 101-F-1 through 12.

Mr. Dexter: No objection except that made to 101-A through 101-A-10.

The Court: Received.

Q. (By Mr. Van Zile): What other institutions or persons loan money on the security of residential properties in the Port Huron area, Mr. Brown?

A. Peoples Savings Bank of Port Huron, Citizen's Federal Savings and Loan Association, individuals and insurance companies.

Q. That was true in 1952?

A. In 1952, yes.

Q. And have you on occasions refinanced mortgages held by Citizen's Federal Savings and Loan?

A. We have, sir.

Q. And did you do that in 1952?

A. In 1952 we did in many cases.

Q. And did they likewise refinance mortgages which you had?

A. Yes, sir.

Q. I will show you Exhibits 102-F-1 through 12 and ask you if they contain instances of such refinancing in 1952?

A. Yes, sir, this does, direct payoff by the Citizen's Federal Savings and Loan to Michigan National Bank, and vice versa, mortgages paid off by us to them.

(1182) Q. I see. Now, one thing that this exhibit differs in is that it contains pictures of the property and a view of the neighborhood, does it not?

A. It does, sir.

Q. In the case of each mortgage that was refinanced; is that correct?

A. Yes, sir.

Q. And where did you obtain those pictures?

A. These were taken directly from our files, sir, on mortgages that we had loaned in 1952.

Q. And do they show the situation of the property in 1952?

A. They do, sir. These pictures, the majority of them have been taken in 1952 that are in our files.

Q. Were these all of the refinancings or simply—

A. (Interposing): They weren't all of them. I would say they were samples that we picked at random where we paid them off and they paid us.

Q. What is Exhibit 102-F-4?

A. This is a mortgage that we made to Leslie C. Kleckler and wife on a home and motel located at 6027 Gratiot Turnpike, St. Clair.

Q. What is the amount of that mortgage?

A. The amount of the mortgage was $3,000.

Q. Was that refinanced by—

A. (Interposing): We have a copy of the mortgage certified by (1183) the Register of Deeds, and then we have a discharge of our mortgage and a new mortgage copy certified by the Register of Deeds taken by the Citizens Federal Savings & Loan Association from the same borrower, Leslie C. Kleckler and wife. They took the mortgage August 6, 1952.

Q. And that was in what amount?

A. $5,000.

Q. And did that include the motel?

A. That included the same property as described in the legal description.

Q. And the balance of the refinancing, I believe, involved residential properties; is that not true?

A. Yes, sir.

Mr. Van Zile: I will offer Exhibits 102-F-1 through 12.

Mr. Dexter: No objection except as to materiality.

The Court: Received.

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(1186) LIST, OSWALD M., was thereupon called as a witness on behalf of the Plaintiff herein, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Will you speak up, Mr. List, so Mr. Whitman can hear you, and all the rest of us?

A. Yes.

Q. You are employed by the Michigan National Bank, Mr. List?

A. Yes, I am.

Q. In what office?

A. Saginaw office.

Q. And what are your duties?

A. I am in charge of the real estate mortgage department, and vice-president.

Q. And how long have you held that position, Mr. List?

A. Since January, 1941.

Q. January, 1941?

A. That is right.

Q. And how long have you lived in Saginaw?

A. Since 1920.

Q. And what was your previous experience prior to 1941?

(1187) A. I worked for Saginaw State Bank and Saginaw National Bank from 1935. Prior to that I was employed by the Bank of Saginaw.

Q. Now, you make real estate mortgages on the security of residential properties from your office?

A. Yes, we do.

Q. And what is the area in which you engage in that activity?

A. Mostly Saginaw County, but a few in Midland County and Bay County.

Q. How large is Saginaw?

A. Saginaw city, approximately about 93,000.

Q. And do you recall in terms of dollars the amount of your residential mortgages in 1952?

A. About $2,200,000.

Q. And what was your total mortgages?

A. About $3,000,000.

Q. And do you remember the number of residential mortgages which you made in 1952?

A. Approximately about 350.

Q. And what were the total number of your mortgages?

A. Approximately about 380.

Q. And on your residential properties did you make all types of mortgage loans, VA, FHA, and conventional?

A. Yes, we did.

Q. Do you rember approximately what the number of FHA mortgages (1188) was?

A. Approximately about 56, and about 11 VA.

Q. And the balance were conventionals?

A. Of the 350.

Q. The balance were conventionals?

A. Yes.

Q. Now, you heard Mr. DeYonker testify, did you not?

A. Yes, I did.

Q. Were your practices loaning money on the various types of mortgages substantially different in the Saginaw area than his in Flint?

A. No, they were not.

Q. And I have asked you to prepare, as I did with the other offices, samples of the mortgages which you made in 1952.

I will show you Exhibit 101-G-1 through 101-G-12, and ask you if that is the set of such mortgages?

A. Those are samples of the mortgages you asked me to prepare; four FHA, four VA, and four conventionals, one for each quarter, one of each for each quarter.

Q. How were these mortgages selected?

A. They were selected by myself at random.

Q. You have examined them?

A. Yes, I have.

Q. Do you feel that they are representative of the other types of mortgages you were making in 1952 or the quarter involved?

(1189) A. Yes, they are.

Mr. Van Zile: I will offer Exhibit 101-G-1 through 101-G-12.

Mr. Dexter: No objection, except the continuing one as those in reference to 101-A-1 through 101-A-10.

The Court: Received.

Q. Now, turning to the terms of these various types of mortgages, taking up first your conventional mortgages on residential properties, what was the usual term of your loans on those properties?

A. Ten years.

Q. And what was your rate of interest in 1952?

A. Mostly five per cent.

Q. And what was the percentage of the loan to appraised value?

A. Sixty per cent of valuation.

Q. And your FHA mortgages, the interest was, of course, four and a quarter per cent; what was your usual term?

A. Twenty years, with maybe a few twenty-five?

Q. And what was the percentage of these loans to appraised value?

A. We made the FHA loans at whatever FHA would permit.

Q. And on your VA loans the interest, of course, was four per cent; what was the usual term?

A. Twenty years, with the exception of, as I recall it, I think there were two at fifteen.

(1190) Q. And what was the percentage of the loan to the appraised value, usually?

A. I would say about 85 to 90 per cent.

Q. Now, were all of these residential loans in 1952 amortized on a monthly basis?

A. Yes, they were.

Q. Were any of them made to secure a pre-existing indebtedness?

A. No.

Q. Did you loan on any particular type of residence?

A. I don't think I quite understand.

Q. Well, I mean, for instance, did you loan only on homes that cost more than $20,000?

A. No, we loaned on any residence as long as the applicant and the property qualified.

Q. Did you loan to any particular class of customer, person?

A. No; if he qualified we made the loan.

Q. Now, on the time that it took you to close these various types of loans, what was your experience, for instance, with a VA loan?

A. We made the VA loans on the automatic basis, so it took approximately about four weeks; in other words, we qualified the property in the application as far as eligibility was concerned, and made the loan on the automatic basis, and sent it to the VA for guaranty.

Q. Well, then, in that respect your experience differed from (1191) Mr. DeYonker, who testified, I think, it was about four to six months?

A. Well, as far as the VA's were concerned, it probably was, because we processed them on an automatic basis.

Q. How long did it usually take you to complete your FHA type loan?

A. About the same time, three to four weeks.

Q. And your conventionals?

A. Ten days to two weeks.

Q. Did you loan money in 1952, or prior thereto, on property which did not qualify for FHA?

A. Yes, we did. I have in mind properties outside the city limits that FHA would not loan.

Q. What associations or individuals were loaning money on the security of real estate mortgages on residential properties in the Saginaw area?

A. The First Savings & Loan Association, Saginaw Savings & Loan Association, Second National Bank, individuals and one mortgage broker, George Fetters & Company, and Equitable Life Insurance Company.

Q. And that was true in 1952?

A. Yes.

Q. And were there occasions in 1952 when you refinanced mortgages which one of the Savings and Loan Associations held, and they did likewise with you?

(1192) A. Yes, we did.

Q. And have you examples of that sort of refinancing?

A. Yes, I have.

Q. I will show you Exhibit 102-G-2 through 8, and ask you if those are examples of that sort of refinancing?

A. Yes, they are.

Q. Now I will call your attention to only one of these particularly, and ask you to explain Exhibit 102-G-3?

A. The mortgage loan given by Percy G. Bennett and Myrtle M. Bennett to Michigan National Bank, dated September 15, 1950, in the amount of $4,500, covering Lot 8 in Block 5 of Norman L. Miller's First Addition to the Village of Saline, discharge of said mortgage dated September 15, 1950, by Michigan National Bank, and a mortgage dated December 15, 1952, between Percy G. and Myrtle M. Bennett to First Savings & Loan Association in the amount of $4,000, covering the same property and description.

(1193) Q. And then here is also a picture in connection with that exhibit, is there not?

A. This picture belongs to this.

Q. That is G-4. Then would you explain Exhibit 102-G-4.

A. That is a real estate mortgage dated May 19, 1952, given by Ernest R. and Ruth A. Miller and Charles A. and Rosemarie Kohler to Michigan National Bank, in the amount of $28,500. It covers the southeasterly 42 feet of Lot 4 and entirely Lot 5 in Ernest Miller's replat of Section 22, town 12 north, range 4 east, City of Saginaw, Saginaw County, Michigan; and a discharge given by Michigan National Bank to Miller and Kohler dated May 19, 1952, and a new mortgage dated July 1, 1952, from Ernest R. and Ruth A. Miller and Charles A. Kohler and Rosemarie Kohler to Saginaw Savings and Loan Association, in the amount of $28,500, covering the southeasterly 42 feet—

Q. (Interposing): That is the same description as on the prior mortgage.

A. Yes.

Q. And do you have a picture with that?

A. Yes, I have.

Q. And that is improperly under the tab 3, is it not, in that exhibit book?

A. Yes.

Q. But that is marked Exhibit 102-G-4?

(1194) A. Right.

Q. And is that a picture of the property involved in that last exhibit we discussed?

A. That is right.

Q. And do you know whether that fairly represents the property as it was in 1952?

A. Yes, sir.

Q. Of your knowledge?

A. Yes.

Q. And what is that building?

A. That is an apartment building.

Mr. Van Zile: I will offer Exhibits 102-G-2 through 8.

Mr. Dexter: We have no objection except as to materiality.

The Court: Received.

Mr. Van Zile: Now, the next set of exhibits are 102-G-1 and 102-G-9 through 29, and I think perhaps we can shorten this up if Mr. List will explain what he did in connection with those exhibits.

Q. (By Mr. Van Zile): Would you simply explain what they are? First, Exhibit 102-G-1 is what?

A. That is a map of the City of Saginaw.

Q. And what have you done with that map?

A. That map shows various locations that are drawn in color and numbered which will identify the areas covering these (1195) mortgages under this exhibit.

Q. Now, you have them marked or coded by number; is that correct?

A. That is right.

Q. And starting with Exhibit 102-G-9, 102-G-9 is number 1 on this map, is it not? Is that correct?

A. Yes, that is right.

Q. And then following that you have other mortgages on locations which are located as indicated on the map as same neighborhoods, is that right?

A. That is right.

Q. Have you done that work yourself? I mean identified the homes through the legal descriptions and gone out and inspected the premises?

A. Yes, I have.

Mr. Van Zile: I think with that explanation, your Honor, I will offer Exhibits 102-G-1 and 102-G-9 through 29.

Mr. Dexter: These are refinancing transactions?

Mr. Van Zile: These are not refinancing.

Mr. Dexter: These are just regular mortgage transactions showing the location of those transactions?

Mr. Van Zile: That is right. In other words, it will show, for instance, that mortgage No. 1 will be a mortgage to Michigan National Bank in this area on this street. Mortgage No. 2 will be a mortgage to, let's say (1196) First Federal Savings & Loan, whatever the case may be.

Mr. Klein: In the same area.

Mr. Van Zile: Obviously, on the same street, yes, in the same neighborhood.

And I would be perfectly willing to offer this on the condition that you can check it in any way you want and if there are any discrepancies, we will be glad to correct them.

Mr. Dexter: What is the purpose of it?

Mr. Van Zile: The purpose is the same practically as with Mr. Tolhurst, only Mr. List has gone to even more trouble in showing that we do loan money on mortgages in the same general area.

Mr. Klein: As building and loan associations.

Mr. Van Zile: As the building and loan associations.

Mr. Dexter: And G-9 to 29 are the documents that show—

Mr. Van Zile (interposing): Support this code on 102-G-1.

Mr. Dexter: No objection except as to materiality * * *.

The Court: We will receive it on that condition.

* * * * *

(1199) Mr. Klein: * * * Your Honor, we have asked Mr. Van Coevering for the intangibles tax returns of the various building and loan (1200) associations who operate in competing areas to that of the bank offices for the year 1952, and I understand he has photostatic copies of those with him. If we may call upon him to do so, we would like to offer them into evidence.

* * * * *

(1203) The Court: Very well, an order may be in the record here that Mr. Van Coevering produce these returns.

(Mr. Van Coevering thereupon hands documents to Mr. Klein.)

* * * * *

(1204) (The documents above referred to were thereupon marked for identification by the reporter as Plaintiff's Exhibit 2-A (Calhoun Federal Savings & Loan Association;) 2-B (Industrial Savings & Loan Association); 2-C (First Federal Savings & Loan, Flint); 2-D (Detroit and Northern Savings & Loan); 2-E (Grand Rapids Mutual Federal Savings & Loan); 2-F (Mutual Home Federal Savings & Loan); 2-G (West Side Federal Savings & Loan); 2-H (Capitol Savings & Loan); 2-I (Lansing Savings & Loan); 2-J (Union Building & Loan); 2-K (East Lansing Savings & Loan Association); 2-L (Marshall Savings & Loan); 2-M (Homestead Savings & Loan); 2-N (Citizens Federal Savings & Loan); 2-O (First Savings & Loan); 2-P (Saginaw Savings & Loan).)

Mr. Klein: Your Honor, there have been marked by the court stenographer photostatic copies of the intangible tax return of the various savings and loan asso-

ciations heretofore referred to operating in localities where the plaintiff, Michigan National Bank, had offices, for the year 1952, Exhibits 2-A to 2-P, inclusive, with the name of each association appearing on each exhibit, and I understand the court stenographer, in describing the exhibit, will detail which Association is referred to in each exhibit.

I would like to offer them in evidence.

Mr. Dexter: Your Honor, they include more than
(1205) just the return. By the "return", it is a tax return, plus the supporting documents. It is the complete file.

Mr. Klein: All right.

Mr. Dexter: Of each one, for the year 1952.

The Court: Very well. Any objection?

Mr. Dexter: No objection.

The Court: Received.

Mr. Klein: Now, your Honor, the next set of exhibits, if your Honor will be good enough to refer, starting with page 27 of our Affidavit of Merits, paragraph 19, it may assist us in following through the next series of exhibits, which are certified copies.

We have marked as Exhibit 6, a document, together with a certificate; the document is published and issued by the Home Loan Bank Board of the United States, Washington, D. C. It is entitled "Combined Financial Statements of Members of the Federal Home Loan Bank System." The book itself consists of some 75 pages, but we only propose to offer page 28 relating to Michigan. The document has attached to it the certificate of Harry W. Caulsen, Secretary of the Federal Home Loan Bank Board, certifying and referring to the one for 1952, and was prepared and distributed by the Federal Home Loan Bank Board. The certificate is dated May

20, 1958, and bears the (1206) seal of the Federal Home Loan Bank Board.

Now, the exhibit itself, just so we may sufficiently describe it, and the purpose of this exhibit, referring to page 28, contains, under the heading "Michigan," on the right-hand side of page 28, a statement of member Savings and Loan Associations, Table 9 of this exhibit, assets and liabilities by states, and class of Association, December 31, 1952, showing the number of Associations in the State of Michigan, the number of Federal Associations, and the number of State Associations shown separately, together with a total combined balance sheet of assets and liabilities of the Michigan and Federal. And, when I say "Michigan," I mean Associations which were operating in Michigan in 1952, some sixty-three in number, showing their assets, their liabilities, including the amount of first mortgage loans in the aggregate, including savings capital or shares, and other pertinent items; and then on the bottom of the table the percentage of first mortgage loans to assets, the percentage of cash of U. S. Government to assets, the percentage of savings capital to assets, and the general reserves and undivided profits in percentage ratios to assets.

(1207) The purpose of the exhibit, sir, is this: we have first shown—I believe we have shown—the balance sheets, statements of condition of the bank as at December 31, 1952, and of the respective building and loan associations operating in the same localities as the bank; that is, in those areas.

We believe it pertinent, and, if your Honor will recall reading the decisions such as the Hartford case and the Minnesota case, there were statistical data submitted to the Supreme Court or in the lower court initially of state-wide, in fact, even federal-wide, operations of the various alleged competing institutions, and we offer this

Exhibit 6 to show the scope of the operations, the general character of the operations; not only in the specific local area, but, in this instance, state-wide.

We think it will be helpful to the court in just appraising the general situation, and we offer the exhibit as a bit of statistical information so that the court may consider the specific local operation in the perspective of that statistical information.

Exhibit 6 is offered.

Mr. Dexter: Object as being immaterial, not the best evidence and not properly authenticated.

* * * * *

(1210) The Court: * * * It is received subject to counsel's objection.

* * * * *

(1211) Mr. Klein: * * * We have here a Certificate from the Federal Home Loan Bank Board in respect to a publication and statistical data issued by the Board, called "Savings and Home Financing Source Book" for 1957, together with a Certificate of Mr. Caulsen, as Secretary, dated June 26, 1958.

Now, in that book there are a number of exhibits we want to offer. The first one is Exhibit 6-A, which is Table 26 in the book, showing nonfarm mortgage recordings of $20,000 or less by type of mortgagee, and it shows it for the United States and also by states, including Michigan.

The Court: Have you got the right table? This is type of lender on 6-A, isn't it?

Mr. Klein: I know, but we had to vary that (1212) a little. It is varied a little, but we have that covered also, sir.

* * * * *

And it shows nonfarm mortgage recordings of $20,000 or less by type of mortgagee, to wit: Savings associations, insurance companies, commercial banks, mutual savings banks, individuals, miscellaneous, and the total. It is for the entire United States, and then by certain selected states, including Michigan.

It is for the year 1956, and I suppose in that respect, although we think it is proper to show the growth and development of these associations and the character of their operations, how they have expanded so greatly—we think that it is pertinent—I anticipate Mr. Dexter is going to object to anything after 1952, but we think it is pertinent to show what has happened.

The Court: Then it is not the same as Table 19 here, which is found as Exhibit 6-A to your Affidavit of Merits; is that right?

* * * * *

Mr. Klein: No, sir.

(1213) Mr. Dexter: Your Honor, I make the same objection (1214) to 6-A as to 6.

The Court: It will go on a separate record because of 1956.

Mr. Klein: Yes, sir. Now, 6-B, your Honor, is again the same type of financial statement, members' combined financial statement, of the Federal Home Loan Bank System, except this is for the year 1956 as compared with the book, Exhibit 6, which was for the year 1952, and we offer this for Table 19 at page 28, showing the balance sheet situations of savings and loan associations in Michigan as at the end of the year of 1956.

The Court: It will go on a separate record. If you want to get any objections on the record, Mr. Dexter, go ahead.

Mr. Dexter: Well, as to all of this statistical information, as far as I can ascertain now, we would object to the fact that it is not the best evidence, they are not properly authenticated, they are not self-authenticating documents, they are irrelevant and immaterial.

The Court: Well, because they are for 1956 I am going to put them on a separate record, and when the Supreme Court gets around to deciding admissibility, they might as well decide all the questions.

Mr. Klein: When I said Table 19, sir, I meant Table 10 on page 28. I said Table 19.

(1215) Now, Exhibit 7 is again in the same source book, which is duly certified as a publication issued and prepared by the Federal Home Loan Bank Board, being the source book of 1957, and we offer Exhibit 7, which is page 15, which is entitled "Investments of Individuals in Savings Accounts, U. S. Savings Bonds and Life Insurance Reserves," for the period as at the end of 1920, and for the various periods shown therein up to and including December, 1956 by classification of savings accounts—that is, savings associations, mutual savings banks, commercial banks, postal savings, credit unions, savings bonds U.S. Government, reserves of life insurance companies, and totals.

I suppose any information after 1952, although we think it is competent as to all, if the ruling is the same, at least we would like the part after '52 for the special record, and including '52 and up to '52 as part of the regular record.

The Court: Does that include the investment of shares in building and loan and savings and loan?

Mr. Van Zile: Yes; savings associations.

Mr. Klein: Yes; savings associations. That is the first one, sir. That is the first column. In other words,

to compare that with the savings in commercial banks, showing the growth during that period in savings associations as contrasted with commercial banks.

(1216) Mr. Dexter: The same objection, your Honor, as to Exhibit 6 and 6-A. That is, they are not the best evidence; not properly authenticated, not self-authenticating, irrelevant and immaterial.

Mr. Klein: May we have it that the same objection applies to all these exhibits? Then you won't have to make the objection every time.

Mr. Dexter: All right.

The Court: There will be the same ruling with respect to 6; that it is received for the purposes stated up to and including the year 1952. Thereafter it will be on the special record.

Mr. Klein: Now, Exhibit 8, your Honor, is a certified copy, with a Certificate of the Secretary of the Board of Governors of the Federal Reserve System, duly authenticated with the Certificate, of the Federal Reserve Bulletin for August, 1956 as issued by the Board of Governors of the Federal Reserve System at Washington, and we particularly offer that for page 821, Supplementary Table 17, captioned "Housing Status of Nonfarm Families (Percentage distribution of nonfarm families within specified groups)," and then it is broken down into income groups from a thousand to two thousand, two thousand to three thousand, up to ten thousand and over; and then with various statistical information—how many own their home, how many rent their homes, and so forth.

(1217) Now, this statistical data here happens to be for 1954, 1955 and 1956. We think it is pertinent, but in view of your ruling, we assume that you will direct that it be made a part of the special record, although we think it should be part of the regular record.

The Court: Same objection?

Mr. Dexter: Well, as I understand Mr. Klein, the same objection as to the other statistical exhibits, 6 and 6-A.

The Court: Same ruling. It will be made a part of the special record.

Mr. Klein: Exhibit 9, your Honor, is a certified copy, with a Certificate of the Commissioner of Labor Statistics of the United States Department of Labor, dated May 19, 1958, with the seal—in fact, this one even has a ribbon on it—showing the average construction costs of new privately owned nonfarm dwelling units started, all types and 1-family by month, for the periods from 1952 through 1957, inclusive. Part of it goes back all the way to 1940 to 1957, and it is by months, and we assume that in view of your Honor's ruling, all reference to periods after December 31, 1952 may be made a part of the special record and the rest a part of the regular record, although we are offering it all for the regular record.

The Court: Subject to the same objection on the (1218) part of the Attorney General.

Mr. Klein: Right, sir.

Mr. Dexter: Same objection, your Honor.

Mr. Klein: Now, Exhibit 10, your Honor, again appears in the same source book previously identified, which is a certified copy, published by the Federal Home Loan Bank Board, in which Exhibits 6-A and Exhibit 7 appear.

This time we are offering page 23, and it is Table 13 and it is captioned "Mortgage Debt, 1-4 Family Nonfarm Homes by Type of Lender" for the period December 31 commencing 1925 and ending in 1956, showing the total of such mortgage debt; then the classifications savings associations—that is, savings and loan—

life insurance companies, mutual savings banks, commercial banks, and then some other columns, and then individuals—that is individual mortgagees, I assume—and then a total for the column; and on the bottom of the table is the percentage of distribution between each type of mortgage.

Since I anticipate your Honor will admit the exhibit in the same manner, all data up to '52 on the regular record, and all data after '52 on the special record, although we are offering it as part of the regular record on all— for instance, it shows in the "Percentage Distribution" that savings and loan associations held over 30 per cent of mortgages by dollar volume in 1952 as compared with 19.2 per cent (1219) of commercial banks at the end of 1952.

The Court: Is there something in those tables somewhere that makes a distinction between what is a commercial bank and what is a mutual savings bank?

In other words, Michigan National has commercial accounts; they have savings accounts. Now, how are they classed?

Mr. Klein: Commercial bank.

We would like to offer Exhibit 10 in evidence, sir.

Mr. Dexter: Same objection, your Honor, as to the other statistical exhibits.

The Court: Same ruling. It is received up through the year 1952. Thereafter, it is on the special record.

Mr. Klein: Then in the same certified volume—that is, Savings and Home Financing Source Book, 1957, Federal Home Loan Bank Board—page 36, we would like to offer into evidence as Exhibit 11 the table therein contained entitled "Nonfarm Mortgage Recordings of $20,000 or Less By Type of Mortgagee," and again it has similar classifications—totals, savings associations, insurance companies, commercial banks,

mutual savings banks, individuals, miscellaneous—and this is for the period from 1940 through 1956, inclusive.

It also contains a chart showing savings and loan associations and all other lenders, and it also has a percentage (1220) distribution between types of lenders for the same period.

We are offering it all as part of this general record, but I assume, in view of your Honor's ruling, for the period after '52 we request that it be made a part of the special record, and we understand it is subject to the same objection that Mr. Dexter has made throughout here in respect to this type of exhibit.

Mr. Dexter: That's right, your Honor; same objection.

The Court: Same ruling.

Mr. Klein: When I said Exhibit 11 also contained the percentage distribution table, I was in error. Exhibit 12 is the percentage distribution table on page 36, and Exhibit 11 is the dollars-and-cents table. It is out of the same source book.

I offer Exhibit 12, and I suppose subject to the same objection and I assume the same ruling, sir.

Mr. Dexter: That is right.

The Court: Same ruling.

(1221) Mr. Klein: Now, Exhibit 13 (1) is out of the same Source Book of the Federal Home Loan Bank Board of 1957, which has been certified. And, in that respect we offer Table 23 entitled number and amount of VA home loans closed, by type of lender, and, again, this has a total; it is classified Savings Association, Insurance Companies, Mutual Savings Banks, Commercial Banks, Mortgage and R. E. Companies—whatever that means—individual and others, and a total and this is for the period from 1951—the number is shown from 1944 to 1956 in one column, and then there

is another column of annual data from 1951 to 1956, principal amounts, and then again annual data by years; and on top of that is a Chart 1, one for 1944 through 1956, combined, I suppose, cumulative, and then for the year 1956.

We are offering it for the general record, but we assume, in view of your ruling, all information subsequent to 1952 will be considered as part of the special record, and all information up to and including 1952 part of the general record.

The Court: You spoke correctly when you said it was Table 23? The reason I ask you, Table 13 shows 22 is a VA and 23 the FHA.

Mr. Van Zile: That is the number of the table in the U. S. Savings and Loan League fact book, but not in (1222) the official Source Book.

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Mr. Dexter: Same objections, your Honor, as to Exhibit 13 (1).

Mr. Klein: And I am offering 13 (2). Exhibit 13 (2), sir, is a certified copy, in affidavit form, of the Director of the Division of Research and Statistics of the Federal Housing Administration, dated May 23, 1958, to which is attached statistical information of the Federal Housing Administration, so marked, entitled "FHA Home Mortgages Originated and Held by Type of Institution 1952." The first page is 1952; the second page is 1953; the third page is 1954; next is 1955, and the next is 1956, and showing the dollar amount and percentage of distribution by type of institution, national bank, state bank, mortgage company, insurance company, savings and loan association, savings bank, Federal agency, all other, and total.

We are offering it all for the general record, but I again assume, in view of your Honor's ruling, the

(1223) 1952 table would be in the general record and the balance in the separate record, if that is agreeable.

The Court: Same ruling on both Exhibits 13 (1) and 13 (2), subject to the same objection.

Mr. Klein: The next exhibit is Exhibit 14, which is a certified copy of some statistical information, a booklet, entitled "Federal Home Loan Bank Board, Washington, D.C.," and entitled "Trends in Savings and Loan Field," for the year 1956, describing certain changes in certain areas, particularly the growth, from 1922 to 1956, and so forth. We are particularly interested in pages 2 and 10 of that document.

Attached to it is a certificate of the Secretary of the Federal Home Loan Board.

I suppose any information after 1952, in view of your Honor's ruling you will make that a part of the special record, although we think it ought to be general.

The Court: I see the pages of text there. I do not want to get to the point I am reading text books here.

Mr. Klein: No, we are only offering the statistical, that is why I referred to page 2, which is a table, and page 10, which is a table.

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(1224) Mr. Klein: We agree with Mr. Dexter, if there is any explanatory notes or statements in the body of the statement, explaining the particular table, we certainly intend that that should be included, so that anyone who reads may understand it.

The Court: Exhibit 14, same ruling.

Mr. Klein: 14, yes, sir.

The Court: Subject to the same objection on the part of the Attorney General.

Mr. Klein: Yes, sir. Now, Exhibit 15 is, again, (1225) from the Federal Home Loan Bank Source

Book, which is a certified copy, which has already been identified, and we at this time offer Exhibit 15, which is there marked page 28, and it is Table 17 "Mortgage Loans Made by All Savings Associations," and it is annual data commencing with the year 1940 and going through the year 1956, showing the purpose of the loan, construction; and another table, home purchase, other, total loans; then where VA loans are included, it is indicated; and there is other information on there.

I assume it is subject to the same objection, and do I correctly assume, sir, that up to and including the year 1952 it will be made a part of the general record, and in respect to the periods after, though offered for the general record, will be made a part of the special record?

* * * * * * *

(1227) The Court: Well, it will be received with that understanding, that if the Attorney General convinces me, on further examination, that some of those are the result of a survey of somebody sent out from Washington, I will strike it out, but if it is based on statistical information sent in by the Associations, it will be received.

Mr. Dexter: I understand you are admitting only the statistical information. For example, there are graphs, but it is the statistics themselves.

The Court: I think the only thing offered up to this time has been the statistical matter.

(1228) There is no Exhibit 16 or 17.

Now, Exhibits 18, 19 and 20 all appear in this certified Federal Reserve Bulletin of April 1958 to which I have previously referred. This is a new one, April, 1958. Exhibit 18 is on page 470 of that exhibit, and we would like to offer, as Exhibit 18, two Tables on the bottom of that page, one Table is marked "Mortgage Activity of Savings and Loan Associations for

the years 1941 up to and including January of 1958 by Loans Made," that is, total new construction, home purchase; and then another one, loans outstanding (1228½) at the end of the period; total FHA insured; VA guaranteed, and conventional.

(1229) The second table on the bottom of the page is entitled "Non Farm Mortgage, Recording of Twenty Thousand or Less," and this is for the period from 1941, and this goes through February of 1958, and then it gives it, among other things, by type of lender, showing savings and loan associations, insurance companies, commercial banks, mutual savings banks.

I would like to offer Exhibit 18 into evidence for the general record. I assume in view of your ruling up to and including 1952 would be in the general record and the balance in the special record, all subject to Mr. Dexter's continuing objection.

Mr. Dexter: Plus the fact, as I understand, your Honor, if this is not tabled based on information required to be reported to the particular agency that is compiling it—it is not within the scope of your admissibility ruling.

Mr. Klein: The bottom of these exhibits shows source, Federal Home Loan Bank Board.

Mr. Dexter: The source was the Federal Home Loan Bank Board, and this particular publication or office or agency was not the source of the material.

Mr. Klein: Exhibit 19 on page 469 of the same Federal Reserve bulletin, April 1958, put out by the Board of Governors of the Federal Reserve System, and we offer the exhibit on the bottom of the page entitled, "Mortgage Loans (1230) Held by Banks," and that shows commercial bank holdings, total, FHA insured, VA guaranteed, conventional, other non-farm, farm, and that is for the period of 1941 through De-

cember 1957, showing the source of the information in the report and so forth.

We only are offering that as to commercial bank holdings, which is on the left side of the chart, although there is a similar table for mutual savings bank holdings.

I assume that it is subject to Mr. Dexter's continuing objection as he has expressed, everything he has said about it with respect to any of these statistical exhibits.

We offer it for the general record. We assume in view of your ruling that all information up to and including 1952 would be a part of the general record, all the remaining information a part of the separate record.

The Court: Same ruling with respect to Exhibits 18 and 19, and subject to the objection of the Attorney General.

Mr. Dexter: I would like the record to show, your Honor, on Exhibit 19: "Sources. All-bank series prepared by Federal Deposit Insurance Corporation from data supplied by Federal and State bank supervisory agencies, Comptroller of the Currency, and Federal Reserve." None of the statistical information includes as original source information to be filed with the agency making this statistical report.

(1231) Mr. Klein: The Federal Reserve is included, and the Comptroller of the Currency. I would think that was a pretty valid—

Mr. Dexter: As to the bank—

Mr. Klein: (interposing): That is all I am offering it to.

Mr. Dexter: As to the bank, your sources are—

Mr. Klein: (interposing): Commercial bank holdings.

The Court: Same ruling.

Mr. Klein: Now, Exhibit 20 is the last of this statistical information which appears on page 449 of the same Federal Reserve Bulletin of April 1958, and it is entitled, "Principal Assets and Liabilities and Number of All Banks By Classes," showing in the caption, "Loans and Investments," Total, then Loans United States Obligations, Other Securities, Cash Assets, and then there is another Total Assets, Total Liabilities and Capital Accounts. Then another heading, "Deposits," Total Interbank, and various breakdowns and number of banks, and this is for the period from December 30, 1939, for all banks.

There is another table for all commercial banks, and then there are some other tables for other type banks. We are particularly interested in the all commercial banks table, and that is for the period from December 30, 1939 (1232) through February 1958.

I assume it is subject to the same objection, and the part after '52 would be made a part of the special record; all before, the general record.

Mr. Dexter: Same objections, your Honor, and I would like to point out that Exhibit 20 in a parenthetical statement says, "Figures Partly Estimated."

Mr. Klein: Those are only a few—

Mr. Dexter: (continuing): "Except on call dates." How would you know, Mr. Klein?

Mr. Klein: Those are where they are marked "P" for the year 1957 only and not in respect to the others. They are preliminary as to 1957, and as to other items they are not preliminary.

Mr. Dexter: It does not so state.

Mr. Klein: It so states precisely. I have the exhibit in front of me.

Mr. Dexter: I was just, your Honor, calling your attention to a line that appears as part of the exhibit.

Mr. Klein: The line appears from July 1957 with a little footnote "P", and that says, "'Preliminary," and as to all others it is not "P.'"

The Court: Maybe you are not talking about the same thing.

Mr. Dexter: Maybe we are not talking about the (1233) same thing, your Honor. I was just calling your attention to this parenthetical remark up here, which is not tied into any footnote whatsoever.

Mr. Klein: That part? That is all right. We assume you will give it the weight which it deserves.

The Court: Same ruling. It is received.

* * * * *

(1241) The Court: Well, the Court will take the responsibility of separating the cases for trial. I will take that responsibility. I think administrative justice requires it here.

I don't see any reason the intervening plaintiffs or you, for that matter, should be put to the expense of traveling all over Michigan, or force them to come down from the Northern Peninsula, as I remember some of them had to, (1242) until we know what the Supreme Court is going to do on this issue. It seems to me that is proper; administrative justice requires it. And as far as I am concerned, I won't put it on the basis of a stipulation; I will put it on the basis as I am ordering it as being a proper method of trying this case.

Mr. Dexter: Your Honor, at this time I would also like to renew our motion for a judgment of no cause of action, based upon the grounds previously noted before your Honor.

We believe that basically this is a question of law. Basically, the question of fact that was presented be-

fore your Honor was, was there a change in the nature of savings and loan institutions, or some marked change in the nature of banks or banking functions and national banks, and we simply believe that none of the evidence has shown any marked change, and therefore, the express pronouncements of the Supreme Court of the United States and other courts as we have summarized in our brief in support of our original motion for a summary judgment still constitute controlling and basic authority that building and loan associations are not within the purview of 5219 of the United States Code Annotated.

The Court: Well, I adhere to the view I expressed at the time you made the motion for summary judgment, that under the court decisions, this is a mixed question of fact (1243) and law. I think there is sufficient evidence to go to the jury, if there were a jury. There isn't one here, but there is sufficient evidence to require that I deny your motion.

I don't want to say anything more on that, because I don't want to say anything as to the weight of evidence at this time. I would rather wait until I get to the end. But I do feel that Justice Taft's observation that building and loans are institutions that permit thrift and build homes for poor people has been slightly changed over the years. At least the poor people angle is out of the picture.

Further than that, I don't want to express any views except those I did express at the time I denied the motion for summary judgment, and I think plaintiff has made such a case that it is entitled to have a trial on the merits.

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(1259) (Exhibit 4-A-29-E was inadvertently left out of list of exhibits on page 1042 of the transcript (July 15, 1958). It was actually marked, and is as described above.)

* * * * *

(1262) Lansing, Michigan,
Monday, October 20, 1958.
9:30 o'clock A.M.

* * * * *

(1263) (A document, being the Assets and Liabilities of all active national banks in Michigan as at December 31, 1952, was marked Plaintiff's Exhibit No. 103 by the reporter.)

Mr. Klein: Your Honor, at the conclusion of the last hearing we had a group of exhibits, and we failed to offer one exhibit, which we should have offered, which has now been marked Plaintiff's Exhibit 103, which is designed to show the assets and liabilities of all active national banks in Michigan as at December 31, 1952, which is abstracted from the 90th Annual Report of the Controller of the Currency, 1952.

(1264) It shows the assets, liabilities and breakdown of the loans and real estate loans, deposits.

The Court: What is the date in '52 there?

Mr. Klein: December 31 of '52. It completes the picture, except this relates to the Michigan situation.

Did you wish to see this, sir?

The Court: Not particularly now. I am assuming it will be available to me if it is received.

Mr. Klein: Yes, surely.

Mr. Dexter: Same objection, your Honor, as to this other statistical information.

The Court: Very well. It is received subject to the objection.

Mr. Klein: I think we rested subject to this one exhibit. I again state the Plaintiff rests its case.

Mr. Dexter: May it please the Court, there are a couple of preliminary matters I would like to call the Court's attention to and have on the record.

One concerns the stipulation concerning the activities of certain savings and loan associations pursuant to pages 539, 540 and 573 of the record.

I would like to have marked and offer in evidence this stipulation. It has been signed by both parties, but the Plaintiff would like to state as part of the stipulation a clarification to item No. 2 appearing on page (1265) 1 of the stipulation.

The Court: Did you misspeak when you said the Plaintiff would like to state it?

Mr. Dexter: No.

The Court: Plaintiff would like to state it?

Mr. Van Zile: Paragraph 2 of the stipulation, which, as I recall the wording, is that the savings and loan associations do not make unsecured loans on the strength of a borrower's financial statement, that we take subject to the understanding that it is not intended to include Title I FHA Loans, which, as we understand it, are made on no security and are accompanied by a statement of the borrower's financial position.

The Court: Will you repeat the reference to the FHA title?

Mr. Van Zile: Title I, sir. They are often referred to as modernization or improvement loans made by the building and loan associations.

The Court: Is that also your understanding, Mr. Dexter?

Mr. Dexter: Right, your Honor.

The Court: Very well.

Mr. Dexter: I don't know whether this should be marked as an exhibit or not.

The Court: To facilitate matters, it may be.

(1266) Mr. Dexter: All right. And I might inform the Court that our exhibit numbering just arbitrarily started at 200, so if the Plaintiff had other exhibits to put in, it would not cause an overlap, and I would like to have this numbered 227.

* * * * *

(1268) Mr. Dexter: These exhibits have been previously identified and marked and have been now identified and marked by the court reporter to constitute Exhibit 202, consisting of two pages, Exhibit 203, consisting of one page, (1269) and Exhibit 203-A, consisting of one page.

It should be noted that Exhibit 203 and 203-A are pages abstracted from the 1957 Annual Report of the Plaintiff, Michigan National Bank, to its shareholders.

Exhibit 204, Exhibit 204-A and B, Exhibit 205, consisting of two pages, Exhibit 205-A, which constitutes another page abstracted from the aforesaid 1957 Annual Report, Exhibit 206 and Exhibit 207, 207-A, and 207-B

Plaintiff has been furnished copies of these this morning, and I assume that what I have said, your Honor, to the stipulation is all right.

It also should be noted, your Honor, that some of the exhibits have figures that refer to a period subsequent to 1952, and we would assume that those would go on the special record as Plaintiff's evidence pertaining to the subsequent period.

Mr. Klein: There is no objection to the offer and admittance of those exhibits.

The Court: They are then received, and those that relate to 1953 and subsequent years are on the special record, as has been ruled on previously.

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Mr. Klein: Just to keep the exhibits straight, if I may, there is another exhibit relating to the exhibit (1270) that has been offered. I would like to have this marked.

* * * * *

Mr. Klein: Your Honor, we have had marked, and would like to offer a table marked, 104, relating to FHA Title 1 Loan, which appear under the heading of installment loans, along with other installment loans of the Michigan National Bank in Plaintiff's Exhibits 202 and 205.

In other words, in the Exhibits 202 and 205, these FHA Title 1 modernization loans are grouped with other installment loans and not under the heading of real estate loans, and, therefore, to complete the record, since building and loan associations do make these FHA loans, we thought it would be well to offer this exhibit, and, as I understand, Mr. Dexter said he had no objection to the offer.

* * * * *

(1271) FAIRLES RUSSELL, was thereupon called as a witness by the Defendants, and, having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Dexter:

* * * * *

Q. (By Mr. Dexter): Mr. Fairles, there is testimony that your bank made conventional mortgages for the term of ten years and then renewed this mortgage for additional ten. Do you know to what extent that was done in 1952?

A. That is like a balloon at the end, you mean?

Q. That's right.

A. We found very, very few instances that that occurred.

Q. In other words, it was very, very insignificant in amount or number.

A. That's right.

Q. Now, in 1952 were any of your residential construction loans made to individuals building their own homes?

A. There would be some.

Q. Were there any construction loans made to those individuals with a specific commitment prior to completion of any specific residential property with that property as security, (1272) with the money or the mortgage money paid on a percentage of completion basis to the individual?

A. There would be some.

Q. Would that be relatively significant or insignificant?

A. On conventionals I would say that it would be the smaller proportion of the real estate mortgage loans made.

Q. Well, were there very many of those made in '52 at all?

A. Well, there would be some. I don't know how many.

Q. You made some mortgage loans to individuals secured by the real estate on which the residential property was being built, with a prior commitment for the total amount of the mortgage and a percentage of the mortgage money paid out during the process of building that home?

A. There would be some.

Q. By "some," do you mean one, two, ten?

A. I don't know how many, but there would be, I would judge, a small percentage on the conventional of that type?

Q. What would you refer as small?

A. I would say on conventional, perhaps—I am just estimating—ten per cent that would be of that nature.

Q. Have you seen any specific books and records you examined in '52 with regard to this question?

A. So far as I recall, I don't know as we discussed this particular phase for conventional mortgages previously.

Q. Then actually, your figures, then, is just a very rough (1273) guess; is that right?

A. That is what I say, yes.

Q. How was the Michigan National Bank sold in 1952, stock?

A. You mean—

Q. (Interposing): How was the Michigan National Bank stock sold in 1952?

A. Over the counter by brokers.

Q. Now, in 1952 did your bank offer for sale to the public or its shareholders any new common stock issues?

A. We have never offered any common stock to stockholders.

Q. Then in 1959, your bank was not trying to obtain additional common stock shareholders?

A. What year?

Q. 1952. Pardon me.

A. No.

Q. Do you know why the new issue of preferred stock was sold by the bank in 1952?

A. We had some RFC preferred stock, and we retired the RFC and reissued it to other purchasers.

Q. Who were the other purchasers in 1952?

A. There were about six other purchasers, six or seven. I don't have all of the names of the purchasers right now.

Q. Well, why was this done?

A. Well, most of the RFC stock had been retired and we have been requested a number of times by the RFC to either retire (1274) or to find another market, so we finally found someone who was anxious or agreeable to purchase it.

Q. How soon was the new issue of preferred stock sold after it was offered for sale?

A. Well, it was all consummated at the same time when we retired the RFC preferred, the new purchasers paid for the new stock.

Q. Was that right the same day?

A. That is right.

Q. Could the preferred stock be redeemed on demand?

A. No. You mean, could the RFC redeem it on demand?

Q. No, your preferred stock, RFC or anyone else be redeemed on demand?

A. No.

Q. Could the common stock be redeemed on demand?

A. No.

Q. In 1952, were the stockholders of the Michigan National Bank of a higher economic class than the share account holders of savings and loan associations?

* * * * * * *

(1275) A. I don't know.

Q. (By Mr. Dexter): Were they of a higher economic class than depositors in your bank?

A. I would say they were the same.

Q. And how do you draw that conclusion?

A. Well, I have been in some of the savings and loan associations from time to time and just obse. ing the people who are doing business there, they don't look any different from the people who are doing business with us.

Q. Apparently, Mr. Fairles, you misunderstood my question. What I mean to say is: Are the stockholders of the Michigan National Bank of a higher economic class than the depositors of the Michigan National Bank in 1952?

A. I would say not.

Q. In other words, Mr. Stoddard is of no economic class than the average depositor?

Mr. Klein: I object to that. Talking about a class, he picks out one person. It is not a class.

Mr. Dexter: We are getting just a little bit (1276) more specific, Mr. Klein.

A. We have about 3,500—you are talking about stockhol rs now?

Q. Yes.

A. We have about 3,500 and we have got them of every financial class. A lot to stockholders were people who were former depositors of the various banks that became part of the Michigan National and they took stock for part of their deposit in the old bank, so they were depositors and now stockholders and they are of all financial classes.

Q. Were they of a generally higher economic class than the depositors?

A. I wouldn't say so, not generally.

Q. And as I understood, you depicted the depositors as people making thrift deposits, thrift savings; is that right?

A. We have both classes of depositors. We have got thrift deposits and demand deposits and time deposits.

Q. Well, Mr. Fairles, would you say that the stockholders of the Michigan National Bank in 1952 were of a higher economic class than the time depositors of the Michigan National Bank?

A. I wouldn't say so, not on an average.

Q. In other words, you consider both thrift investments?

A. Well, they are both the same financial standing, I would say.

Q. By way of review, Mr. Fairles, what kinds or types of deposit did your bank receive in 1952?

(1277) A. Time and demand.

Q. That was true for each branch?

A. That is right.

Q. What interest was paid on each of these types of deposits?

* * * * *

A. (Examining documents.) 1952, we were paying one per cent per annum, with the exception of Flint, where we were paying one and a half.

The Court: What was that last exception?

A. With the exception of the Flint office, where we were paying one and a half.

Mr. Klein: On savings accounts?

A. Savings book accounts.

Q. (By Mr. Dexter): Did you pay the same amount of interest on all of your time deposits?

A. We had a time certificate of deposit that we were paying a greater rate of interest. We were paying as much as two and a half per cent on time certificates of deposits that were on deposit for a period of five years.

Q. In addition to the payment of interest, what other services were performed by the Michigan National Bank for its depositors in 1952?

A. All of the regular services that an ordinary commercial bank does for its depositors.

(1278) Q. Such as?

A. All types of loans, what they ordinarily do for demand depositors in the payment of checks, receiving deposits, clearing of checks deposited.

Q. Did the Michigan National Bank make loans to individuals, corporations and partnerships in 1952?

A. We did.

Q. Of the aggregate amount loaned in 1952, could you estimate the percentage of the loans made to each of these types of borrowers?

A. You mean—

Q. (Interposing): What was the percentage of the total of the loans you made to individuals?

A. No, I haven't got that percentage.

Q. You wouldn't know how to break that down on individuals, corporations and partnerships? Could you break it down?

A. It could be estimated, but we don't ordinarily break it down to individuals as such on many statistical reports that we make out.

Q. Do you have any valid basis of obtaining a good estimate?

A. Not very much, not at this time. The loans are classified not according to corporate. We do on certain types of loans, but not on all types.

Q. Could you break down, Mr. Fairles, this mortgage loan business to those two, commercial concerns and non-commercial?

(1279) A. You are talking about mortgages now?

Q. Total loans I am talking about.

A. You just said mortgages. Mortgages I do have some figures here, but not on total loans.

Q. You have a breakdown on the mortgages, and I think that is already in the record, isn't it?

A. It is in the record.

Mr. Klein: I am going to ask him, so you may as well, to keep it in continuity.

Q. (By Mr. Dexter): Well, would you give that breakdown, then, Mr. Fairles?

A. As of December 31, 1952, we had a total of mortgages and FHA improvement loans of $70,291,000. Of this amount, residential mortgages amounted to $51,419,000; business mortgages, $10,210,000; farm mortgages, $445,000—

The Court: (interposing): How many of these?

A. $445,000 for farm; and improvement, FHA Title 1 improvement loans, $8,317,000. That should total $70,391,000.

Q. (By Mr. Dexter): Is that the total mortgages made in 1952?

A. That is the total including the FHA improvement loans.

Q. Is it the total made or the total outstanding in 1952?

A. It is the total outstanding at December 31, 1952. We had a grand total loaned of $148,304,000.

Q. In 1952 did the bank or a subsidiary corporation have safety deposit facilities?

(1280) A. The bank did.

Q. In 1952 did the bank have a trust department?

A. It did.

Q. Did it act as trustee for testamentary or inter vivos trusts?

A. It acted as trustee, yes.

Q. Did the Michigan National Bank in 1952 act as a collection agent for any of its customers or depositors?

A. It did.

Q. In 1952 did the Michigan National Bank loan any money secured by shares of stock?

A. It did.

Q. In 1952 did the Michigan National Bank loan any money secured by bills of lading?

A. It did.

Q. Did you loan any money secured by fungible goods in 1952?

A. What kind of goods?

Q. Fungible.

A. Yes, we did, yes.

Q. Did you make any unsecured loans in 1952 which were not guaranteed or insured by a governmental agency on the mere strength of a borrower's financial statement?

A. We did.

Q. What are oil loans?

A. What are they?

(1281) Q. Yes.

A. Secured by oil properties and oil leases.

Q. Did Michigan National Bank make any such loans in 1952?

A. We did.

Q. In 1952 did Michigan National Bank make any loans secured by chattels, such as automobiles, appliances and trailers?

A. We did.

Q. In 1952 did your bank make any loans secured by insurance policies?

A. We did.

Q. In 1952 did your bank make any loans secured by livestock?

A. We did.

Q. In 1952 did Michigan National Bank loan any money to finance companies?

A. They did.

Q. How much?

A. I don't know

Q. Could you obtain that figure for us?

A. I think we could.

* * * * *

Q. (By Mr. Dexter): In 1952, did the Michigan National Bank issue (1282) letters of credit?

A. We did.

Q. In 1952, did your bank purchase and sell securities or ship and receive the same on the order of a customer?

A. We did.

Q. In 1952, did your bank deal in domestic and foreign exchange?

A. We did.

Q. Did your bank act as a transfer agent for corporate stocks in 1952?

A. We did.

Q. In 1952, did the Michigan National Bank act as a registrar for corporate stocks?

A. We did.

Q. Did the Michigan National Bank act as a dividend disbursing agent in 1952?

A. We did.

Q. In 1952, did your bank act as a coupon paying agent?

A. We did.

Q. In 1952, did the Michigan National Bank act as a trustee for security issues?

A. We did.

Q. Referring to Exhibit 205, which is the bank's operating statements for the years 1942 through '57, what comprises the general loans which produce the interest income noted thereon?

(1283) A. Interest on general loans represents interest received on loans to manufacturers, wholesalers, retailers, and some individuals.

Q. And what comprises the installment loans?

A. Interest on installment loans represents interest on loans in the financing of automobiles, on types of collateral, FHA Title 1 improvement loans, and other types of installment loans, mostly individual.

Q. In 1952, did your bank reject any applications for residential mortgage loans?

A. Yes.

Q. Would one of the reasons for this rejection be the financial condition of the borrower?

A. It may be.

Q. Was it?

A. Well, I don't know.

Q. Well, was that alone the reason?

A. I would say that occasionally a loan would not be granted due to the condition of the borrower.

Q. Would one of the reasons be the interest rate he indicated that he as a borrower was willing to pay?

A. You mean that the borrower didn't want to borrow from us because the interest rate was too high?

Q. Yes, or that he wanted to borrow from you at a lower rate on residential mortgage purposes?

(1284) A. Well, if he didn't want to pay the rate we were asking, he wouldn't get the loan.

Q. And you had rejected loans on that basis in 1952?

A. I don't know. I have never heard of one like that, but I am not sure.

Q. Well, did you reject any applications for residential mortgage loans because of the terms, that is, the borrower wanted a longer term than you were willing to give or able to give?

Mr. Klein: Which type of mortgage are you talking about?

Mr. Dexter: We are talking about the—

Mr. Klein: (interposing): Conventional, VA?

Mr. Dexter: We are talking about all residential mortgages.

A. I don't know specifically. We would have to find out, to look at them and see why they were specifically declined.

Q. (By Mr. Dexter): Well, the question was, did your bank reject any application for residential mortgage loans in 1952 because of the term of the loan being requested by the borrower?

A. I think we may have occasionally.

Q. And the answer would be yes?

A. Occasionally.

Q. The answer would be yes?

A. In a few instances.

(1285) Q. Did your bank in 1952 reject any applications for residential mortgage loans because the borrower wanted to borrow a greater percentage of the appraised value of the property than the bank was willing to lend?

A. We would.

Q. Did you?

A. We did.

Q. In 1952, did any borrower refuse a residential mortgage loan from your bank because of the proposed interest rate?

A. I haven't heard of one.

Q. Not to your knowledge?

A. Not to my knowledge.

Q. Now, what service did the Michigan National Bank perform for local, state and county governmental units in 1952?

A. We accepted deposits from various municipalities.

Q. Did you perform any other service?

A. Well, we made loans to some municipalities.

Q. Is that all?

A. Well, whatever goes along with handling their commercial account, we would do for them, cash their checks, accept the checks that they deposit.

Q. In other words, that was the only physical or monetary significance of the Michigan National Bank for governmental agencies in 1952, was to deposit and commercial account activity?

(1286) A. I said we loaned them money occasionally.

Q. And loaning money occasionally. Is that the extent of it? Is your answer yes?

A. Well, we would do anything that they would ordinarily expect if they had their account with us. I can't think of anything that they may ask us to do, but any-

thing that would be ordinarily expected of the commercial bank, why, we would do for them. We accepted deposits, and we made loans. That is the main part of our business.

Q. Would you concede in 1952 the Michigan National Bank performed no other significant govenmental purpose, Mr. Fairles?

A. If you can tell me specifically what you have in mind, I might be able to tell you whether we are doing it or not.

Q. I am asking you.

A. As I say, we do anything that an ordinary commercial bank would do for these municipalities in accepting deposits or making loans.

Q. What is your concept of what an "ordinary commercial bank" will do for governmental agencies?

A. Just what I told you.

Q. Including the Federal goverment.

A. Just what I told you. We accept their deposit, credit the checks they deposit, cash checks when they draw on us, charge checks that are drawn on us to their account, submit (1287) a statement to them, and make loans when they request such loans and they are entitled to such loans.

Q. Was that the same service that you rendered to your depositors, borrowers?

A. Pretty well.

Q. Now, in 1952 was your bank service to its shareholders to make as much profit as possible?

A. In 1952, were we trying to make money? We were.

Q. As much money as possible?

A. We always try to make—

Q. (Interposing): As much as you can make; isn't that right?

A. That is what we figure we are in business for a little bit.

Q. And the answer to the question is yes, then, isn't it?

A. I would say it is.

Q. Was there any other purpose for its activities as far as stockholders are concerned?

A. To serve the community.

Q. As far as the stockholders are concerned?

A. To serve the community as far as the stockholders are concerned.

Q. In 1952 what was the source of bank funds for lending and other operations?

A. Is that the end of the question?

Q. Yes. What was the source of the bank funds in 1952?

A. Deposits.

(1288) Q. Deposits was the source of your lending funds?

A. In 1952, all of the additional funds that we had to loan was from deposits.

Q. Now, has the Michigan National Bank ever sold any of its common stock to the general public subsequent to the original issue in 1940?

A. We have never sold common stock since Michigan National was formed.

Q. In 1953, your earnings per share before Federal income taxes of a $10 par value common stock was a little over $8, as indicated by Exhibits 4-A and 205.

What relation did your deposits have to this earnings per share figure?

A. I don't know offhand, without figuring it out.

Q. But was there a direct relationship between your earnings per share and the amount of deposits?

A. Yes, there would be some relationship between the earnings per share and the amount of deposits. The more deposits we have, the more we have to work with.

Q. Mr. Fairles, what portion of your total capital account—that is, your capital surplus and reserves—was allocated to each of your branches in 1952?

A. We don't allocate anything to any of the branches.

Q. Is such an allocation possible?

A. Anybody could make any kind of an arbitrary allocation, but (1289) there is no necessity for it, and we don't do it.

Q. I mean, it is only possible to the extent you just would arbitrarily do it?

A. That's right.

Q. But it would have no significance, as far as the Michigan National Bank was concerned, in 1952?

A. None whatsoever.

Q. Your entire capital is available wherever the bank does business?

A. That's right.

Q. Now, in 1952, what part of Michigan National's outstanding shares of common stock was actually competing in Grand Rapids with other moneyed capital?

A. We just mentioned that we didn't make any distribution according to offices, as far as the special stock is concerned.

Q. But this account we are talking about, Mr. Fairles, is the $13,000,000 figure, and I believe the bank has assets in excess of $205,000,000.

Now, I am asking you what part of this $13,000,000 figure was used in the Grand Rapids area in competition with other moneyed capital?

A. It is all used in every area. We don't break it down. It is one bank, and we use the capital—as far as the capital is concerned, it is in every area.

(1290) Q. And that would be your answer in regard to all your other areas—in Lansing, Battle Creek, Marshall, Port Huron, Saginaw and Flint—all this capital was used?

A. That's right.

Q. Could you state, Mr. Fairles, what part of this total capital figure of $13,000,000 was used in your total area in the mortgage business in 1952?

A. All of it was used everywhere, in every area. We don't break it down at all.

Q. What portion of the total assets were loaned in 1952?

A. December 31, 1952, we had total loans of $148,305,000; total deposits of $282,617,000.

Mr. Klein; Capital stock?

A. And total capital stock on December 31, 1952, of $14,931,000, including reserve for loan losses. So our loans were a little less than half of our total assets.

Q. Now, Mr. Fairles, how would you allocate your capital as employed in the mortgage business or the loan business, as contrasted to allocating your capital to your other assets, cash, government securities, and so forth?

A. We don't allocate it at all.

Q. You could not make any allocation of it?

A. We have no necessity to do it and we have never done it and there is no reason for doing it.

Q. You couldn't then trace any one dollar of your capital (1291) account to any particular mortgage activity in 1952?

A. No.

Q. Or any portion of it?

A. No portion of it.

Q. Describe the governmental agencies which supervised Michigan National Bank in 1952?

A. The Controller of Currency, Washington, D. C., is the only governmental agency that directly supervises national banks.

Q. Could you give a description of the type of supervision?

A. They have national bank examiners that work out of Chicago; they ordinarily come twice a year and make a complete examination of all of the offices of the Michigan National Bank at the same time.

Q. What does that kind of an examination consist of?

A. They run all of the assets and all of the liabilities and they value the assets.

Q. Do you know some of the reasons or purposes behind that kind of a check as far as they are concerned?

A. They are supposed to make sure that all of the assets and liabilities are in balance and proper, and also the value of the assets, to determine if there are any losses.

Q. And would they be interested in the liquidity position of the Michigan National Bank in 1952?

A. They figured the liquidity.

Q. And is that significant in their examination?

(1292) A. They have it as part of their examination.

Q. Now, were deposits in the Michigan National Bank insured by any Federal agency in 1952?

A. The Federal Deposit Insurance Corporation.

Q. And in what amount?

A. $10,000 for a deposit in the same name.

Q. Now, was the capital stock of the bank insured by any Federal agency in 1952?

A. No.

Q. Now, Mr. Fairles, are you familiar with the brochure entitled "Facts about the Difference Between Banks and Savings and Loan Associations," sir?

A. Yes.

* * * * *

Q. (By Mr. Dexter): Did Michigan National Bank have anything to do with its preparation?

A. We made one up something similar for our own information.

Q. In other words, you did have something to do with its preparation?

A. We did.

Q. Did you have something to do with its contents, what content (1293) it was going to contain?

A. Well, I think we did have quite a bit to do with its contents.

Q. Now, did the Michigan National Bank pay part of the expense of its printing?

A. It did.

(A brochure was marked Defendant's Exhibit No. 217.)

Q. I will show you an exhibit marked 217. Is this the brochure which we have been talking about?

A. It is.

Q. Did the Michigan National Bank circulate that brochure?

A. Along with other banks, we did.

Q. And it was available for people to pick up at your place of business?

A. It was.

Q. At all your places of business?

A. That is right.

Q. Do you know what the purpose of its circulation was by the Michigan National Bank?

A. Just what it says, to give the people the facts about savings and loans and banks.

Q. Does it make a comparison between savings accounts in banks and savings share accounts in savings and loan associations?

Mr. Klein: Your Honor, I think that the exhibit speaks for itself, and we can have it read in the record (1294) if he wants.

* * * * *

Mr. Dexter: I would like to offer Exhibit 217.

Mr. Klein: When was that published?

Mr. Dexter: It is not indicated on the exhibit.

The Court: Do you know when it was published, Mr. Fairles?

A. No, I don't know the exact date.

The Court: Was it in 1952 and prior years, or after that?

A. I think it was published prior to '52, although I am not sure.

Q. (By Mr. Dexter): But the same references here would be equally true in 1952?

A. That is correct.

Mr. Dexter: I would like to offer Exhibit 217.

* * * * *

(1296) The Court: But if both sides want it in, why, I am certainly not going to object.

(Received by consent.)

Q. (By Mr. Dexter): How can you loan out any more than your capital? For instance, I understand in 1952 your capital account was around $13,000,000, and you loaned 143-some-odd-million dollars. How can you do this?

A. We have loaned part of our deposits.

Q. In other words, deposits make it possible for you to do this?

A. That's right.

Q. Now, in 1952, did you make any loans secured by real estate mortgages in counties outside the counties in which you had (1297) branches?

A. We did.

Q. And do you know what counties those were?

A. No, I don't.

Q. Did you make loans to borrowers throughout the State of Michigan?

A. We did.

Q. In 1952 did you make loans to borrowers who resided or conducted a business outside of Michigan?

A. We did.

Q. What was the principal type of loans made to borrowers outside of Michigan in 1952?

A. We made loans of all types.

Q. What was the principal type of loan made to borrowers outside of Michigan?

A. The principal type in dollar volume was mobile home or house trailer loans.

Q. What we refer to as trailer paper?

A. That's right.

Q. Did your 1952 earnings on trailer paper produce a greater yield per dollar loaned than your loans secured by residential mortgages?

A. Yes, they did.

Q. It was a substantially greater yield, was it not?

(1298) A. Substantial.

Q. Now, what effect would an increase in the number of real estate loans made by your bank in 1952 have had on your liquidity?

A. Well, we always keep them within certain ratios of our total assets so that we don't have any problem to speak of in that connection.

Q. What effect would an increase in the number of real estate loans made by your bank in 1952 have on this liquidity?

A. If there happened to be FHA mortgages, it doesn't make as much of a difference because they are guaranteed by the United States Government, by the Federal Housing Administration.

Q. And is the FHA type of loan more marketable than the conventional loan?

A. Not ordinarily. We sell occasionally both types and the interest rate governs the price pretty well.

Q. As I understand it, if your real estate mortgage loans in 1952 had increased, that would have decreased your liquidity, would it not?

A. If they are FHA mortgage loans, it wouldn't have made much difference because they are guaranteed by the Federal Housing Administration. They are included in our report to stockholders, along with cash, United States Government (1299) and guaranteed loans.

Q. You treat FHA mortgages as a liquid item?

A. We treat it as a liquid item in our statement to stockholders, the same as we do to U. S. Government bonds.

Q. How about statements to the Controller?

A. They are shown as a separate item stated to the Controller.

Q. They are not liquid to the Controller but they are liquid to the stockholders, is that it?

A. No. He considers them when he makes examinations; he asks for it specifically, for a breakdown of loans, whether they are guaranteed or whether they are not, and they take that into consideration, too, whenever they make an examination or when they get a report from us.

Q. May I ask you this, Mr. Fairles, how can you treat a mortgage of the length of term that you say your average FHA mortgages were as a liquid asset? Uncle Sam—you cannot convert it to cash with the Federal Government, if you want to, can you?

A. We can convert it to cash with a less of a loss than we can on U. S. Governments today.

Q. By that you mean, by selling the mortgage?

A. The mortgage would be the same dollar volume mortgages; we would have a less of a loss on it than we would on Governments, and that is true of most banks right today.

Q. That is selling the mortgage?

(1300) A. Selling the mortgage or selling the Government bonds. I mean your loss on the sale of the mortgages, say, for instance, if you sold them to an insurance company or to the Federal National Mortgage Association, on million dollars right today, you would take less of a loss, the majority of the banks would, by selling them than they would by selling U. S.—you would take more of a loss on U. S. Government bonds.

Q. And it is for that reason, because of the readily marketability of the FHA that you can treat it as a liquid asset?

A. The main reason is because they are guaranteed.

Q. I mean, the guarantee and the uniformity of the FHA type of mortgage lends itself to this readily marketability concept?

A. They aren't any more marketable than the conventional mortgage because they all go for a price, depending upon the interest rate, but the main reason we include it along with cash, U. S. Governments, is the fact that it is guaranteed and we don't only include the FHA mortgages in that category, we include other types of guaranteed loans.

Mr. Klein: Guaranteed by whom, Mr. Fairles?

A. Guaranteed by some branch of the United States Government.

Q. (By Mr. Dexter): Now, wasn't your investment in trailer paper in 1952 criticized by the Controller because of its effect on yor banks' liquidity?

(1301) A. I don't believe it was on account of the effect of liquidity. Ever since we or any other bank went into the financing of what we call trailer paper, vehicles or mobile homes, the national bank examiners haven't had the same amount of experience that they have had with mortgages and they figure it was a concentration of more in that type of asset than they felt was warranted, and that the only criticism that they have ever mentioned to us. They never mentioned anything about liquidity. It is just a concentration of more in that type of asset.

Q. Didn't you answer such criticisms by representing that your projected deposits and/or capital would restore or preserve your bank's liquidity?

A. We hadn't gotten into the liquid angle as far as the mobile home, just the fact of the concentration of too much in one type of asset.

* * * * *

(1302) Q. (By Mr. Dexter): Mr. Fairles, does the granting of conventional loans affect the liquidity of the bank?

A. Of conventional mortgages?

Q. Yes, conventional mortgages.

A. The more loans of any type that we have in proportion to our capital would affect the liquidity of the bank.

Q. And this would be particularly true of conventional mortgages, long term?

A. Not particularly, because both types of mortgages, what we want to be in our various localities is the main source of funds for mortgage, real estate mortgage loans, and quite a few years ago we established contacts with savings banks in the east and insurance companies throughout the country to act as their agent in real estate mortgage loans, and we originate, sell and service real estate mortgage loans, conventional and FHA, to these concerns, and for that reason we are in a position to create proportionately more of the real estate mortgage loans than we ordinarily would if we planned to hold them all ourselves. So the liquidity wouldn't make any difference, because if we felt we were reaching the point where we were originating more real estate mortgage loans than we should keep for our own account, why, we would sell them to these savings banks and insurance companies, and (1303) we have in the past also sold to federal national mortgage associations.

Q. But to answer my question, conventional mortgage loans on the books of the bank as of any given date does affect the bank's liquidity, does it not?

A. It does.

Q. So that the conventional mortgage loans that the Michigan National Bank had on its books as at December 31, 1952, affected the bank's liquidity?

A. It did, along with all other types of loans that we would make.

Q. Now, what was your liquid position in 1952?

A. (Examining documents): The end of 1952, December 31, 1952, we had cash and new from banks of \$46,162,000, U. S. Government securities of \$109,140,000, and we had guaranteed loans of—the figure is not shown here, but I estimate around about 50 million.

Q. That would be what you would show or call generally as your liquid assets; is that right?

A. That is right.

(1304) Mr. Klein: In comparison to the total of how many assets?

A. 309 million 148 thousand.

Mr. Klein: What percentage, approximately?

A. Well, if guaranteed loans are approximately 50 million, which I haven't the figure right here, that would be about two-thirds against one-third.

Mr. Klein: Two-thirds what?

A. Two-thirds cash, U. S. Governments and guaranteed loans.

Q. (By Mr. Dexter): Now, Mr. Fairles, does or does not the concentration of your assets in any one field such as this trailer paper have some bearing on liquidity?

A. Well, I claim not, because this mobile home paper or trailer paper is of comparatively short duration, and whenever I have talked with financial bank examiners pertaining to mobile home paper, I have always mentioned to them that they never criticize our real estate mortgages, and they are concentrated principally in the seven cities in which we operate.

The mobile home paper is spread all over the United States. We have no concentration there, and it is to individuals and it is paid rather rapidly. It is limited over a short period of time as compared with, say, real estate mortgage loans.

So I don't feel that it is not liquid. Is that what you meant?

(1305) Q. No. I meant, Mr. Fairles, that the concentration of the assets of the bank to any one particular person or to any one particular type of security does affect liquidity, does it not?

A. No, not necessarily. ~~It doesn't.~~

Q. In your opinion, it has no effect on liquidity?

A. No effect on liquidity at all. It depends how they pay off, on liquidity.

Q. Well, might the concentration of assets have a bearing upon how they are paid off?

A. Not necessarily. Concentration means in one area.

For instance, if you had a strike in Flint and you had a concentration of your loans in Flint, you would be at more of a disadvantage than if you had it spread all over the United States.

Q. You don't conceive concentration, then, to be in terms of the type of security?

A. No. It is according to area.

Q. Now, of all the funds lent by the bank in 1952, what percentage of the dollar amount was lent to individuals for personal use?

A. Against what type of collateral?

Q. Well, any type of collateral.

A. Well, that is one question way back I told you I didn't know, because we don't have it broken down for all types of loans (1306) to an individual.

Q. Do you have a breakdown of the total commercial loans in 1952 as compared to the total what might be referred to as personal loans?

A. Yes. December 31, 1952, we had general loans, which is loans to manufacturers, wholesalers, retailers and some individuals, 28 million 699 thousand.

FHA mortgage loans, 26 million 945 thousand. That would be to individuals.

Loans other mortgages, 34 million 852. That would be to businesses and individuals.

Installment loans, 57 million 809 thousand, and that would be mostly to individuals.

And total loans of 148 million 305 thousand.

(1307) Q. Can you express that in any rough comparison figures what is to individuals and what is to commercial?

A. (Pause.)

Q. Is that about a 60-40 ratio in favor of the commercial?

A. No, no. Our loans are mostly to individuals. You see, the loans of $28,699,000—some of those would be to individuals. I would judge perhaps of that figure, roughly two-thirds of the $28 million might be to business, one-third perhaps to individuals. Of all of the other types of mortgages or all of the other types of loans, both mortgage and installment loan, it would be practically all to individuals.

Q. Is all of your trailer paper with individuals?

A. Yes. There might be one or two instances where they may have sold a trailer to a business, but practically all of it is individuals.

Q. You go thriugh a trailer manufacturer to establish that contact with the individual?

A. No. It is through the dealer; the dealer sends the contracts into us.

Q. Through the dealer? And through the dealer you get the papers?

A. We get the papers from the dealer.

Q. So you would call that to individuals even though you are dealing with dealers?

A. The loan is made to the individual; the individual signs the note and he pays the note and he is the borrower.

(1308) Q. Now, do you know what the scale of service charges made by your bank was during 1952?

A. For commercial?

Q. For checking accounts at each branch?

A. No, not offhand, I don't. I believe the charges were at that time the same in all offices. I believe in the personal accounts, it was five cents for each check paid and we allowed ten cents a hundred per month average balance as a credit against that five cents and on business accounts, it was two cents charge for each item, including the checks, charged against the account and the items that were included on the deposit were deposited and we allowed a credit of ten cents a hundred a month to offset that charge.

Q. I realize this next question you probably would have no way of knowing the answer to, but do you know the approximate total assets of all financial institutions and individuals employing their capital in some phase of the business conducted by your bank in the area that it had operated in 1952?

A. No.

Q. Do you have any way of knowing the total moneys lent in this area in 1952?

A. For what purpose?

Q. For all purposes.

A. You mean all types of loans?

Q. Yes.

A. No, I have no idea.

(1309) Q. The total moneys lent on real estate mortgages in 1952 in the area that the bank operates?

A. Well, we make up reports and I think it is in the material on mortgages recorded in each of our counties; I don't recall the totals on each of those statements.

Q. But I mean outside of that statement there, you have no information?

A. That is the only information that I have.

Q. As I understand it, the bank did do business in counties other than those counties?

A. We did.

Q. And in fact you did business in the states other than Michigan?

A. All over the United States.

Q. All over the United States?

A. Yes.

The Court: Mr, Dexter, does that imply that you had asked him whether he did do any mortgage business outside of the State of Michigan, real estate mortgages? The question is rather general and I want to be sure.

Q. (By Mr. Dexter): You did not loan moneys secured by real estate located outside of the State of Michigan, did you?

A. We did.

Q. You did?

A. Yes, we did.

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(1319) *Re-direct Examination*

By Mr. Klein:

Q. Mr. Fairles, looking at plaintiff's Exhibit 202—that is the statement of condition, assets and liabilities, as at December 31, 1952, would you state to the Court the total amount of all types of loans?

A. 148 million 305 thousand.

Q. And included in that amount is approximately 27 million of FHA mortgages?

A. That's right.

(1320) Q. Approxicately $35 million of other mortgages?

A. That is correct.

Q. And according to defendant's Exhibit 104 for '52, you had $7 million 7 of title 1, FHA Title No. 1 modernization mortgages?

A. That is the average.

Q. Or loans, rather?

A. That is the average; that is Title No. 1 Improvement, FHA Title No. 1 Improvement loans for 1952, the average is $7,719,000.

Q. So, 27, 35 is 62 plus around almost eight; it is almost $70 million of either mortgages or FHA Improvement loans?

A. Right.

Q. And what percentage of that was for residential purposes, approximately of that $70 million?

A. Practically all of it.

Q. Practically all of it?

A. Ninety-five per cent, at least.

Q. And that roughly is ninety-five per cent of $70 million or around $65 million or so of total loans were for residential mortgages or modernizations out of total loans of $148 million?

A. That is right.

Q. Or approximately what per cent is that; that is, approximately it is over forty per cent, isn't it?

(1321) A. Between forty and fifty per cent.

Q. So between forty and fifty per cent of the bank's loan business as at 1952 was on mortgages for homes or modernization for homes?

A. That is right.

Q. Now, referring to plaintiff's Exhibit No 205 which shows the operating statement of the bank for the year 1952 which shows total interest income of approximately $11 million, is that correct?

A. That is correct.

Q. And of that amount approximately $2 million 6 is shown as interest on mortgage loans, is that correct?

A. That is correct.

Q. And approximately, looking at plaintiff's Exhibit 104, \$554,000, is the estimated annual income on these modernization FHA No. 1 loans?

A. Correct.

Q. Or a total of \$3 million 1 of interest less five per cent for the non-residential amounts or almost \$3 million of mortgage income out of \$11 million of interest income.

A. That is correct.

Q. In other words, almost thirty per cent of the bank's interest income for '52 was from residential mortgage loans?

A. That is correct.

Q. And looking at Exhibit 202 again, the estimated \$68 or \$69 (1322) million of residential mortgage loans is approximately what ratio of the total assets of \$309 million? About a little over a fifth, wouldn't it be?

A. Well, between twenty and twenty-five.

Q. That is of all of the assets, including cash and Government bonds and everything?

A. That is correct.

Q. And then in 1952, looking at plaintiff's Exhibit No. 202, what was the total amount of your deposits? Is it \$282 million?

A. Right.

Q. Of which according to the exhibit, \$117 million—almost \$118 million—or approximately forty per cent were in time certificates or savings deposits?

A. That is correct.

Q. And the balance was in commercial deposits?

A. Correct.

Q. Now, I believe Mr. Dexter asked you at the outset whether or not there were many extensions on conventional loans beyond the ten year period. Do you know of any instance when any mortgagor requested an ex-

tension beyond the ten year period when the Michigan National Bank ever declined it?

A. No, I do not.

Q. What was the policy of the Michigan National Bank in 1952 in that connection?

A. In grating extension?

(1323) Q. Beyond the ten year period.

A. Well, if the property and the credit of the mortgagor warranted it, we would certainly extend the credit.

Q. And what has been the experience of the Michigan National Bank as to the desire of mortgagors to pay prior to the ten year period?

* * * * *

A. Well, from our experience in endeavoring to get information for this trial, we found that the majority of them were paid off before maturity. Either they had sufficient funds to pay off the mortgage or the property was sold and someone new came into the picture.

* * * * *

(1324) Q. * * * Now, you have testified, Mr. Fairles, that your bank endeavored to be the largest residential mortgage lender in each of the communities in which it had offices and then said something about reselling. When you resold a mortgage to other institutions, did the Michigan National Bank first take the mortgage in its own name?

A. We did.

Q. Did you know at the time that you took those mortgages that you were going to resell them at the time?

A. Not always, no.

Q. Was there any time in 1952 when the Michigan National Bank found itself unable or unwilling to accept additional residential mortgages on homes?

A. No.

Q. Was it looking for additional mortgages on homes in that period?

A. We were.

* * * * *

(1325) Q. * * * Did the bank make a profit or not on mortgages which it originated when it sold mortgages to other institutions?

A. It made a profit.

Q. Did the bank retain most of the mortgages it originated in 1952 or did it sell more than it retained?

A. It retained most of them.

Q. It retained most of them?

A. That is right.

* * * * *

(1327) *Re-direct Examination* (Continued)

By Mr. Klein:

Q. I have had several of the pages of Exhibit 4-A-1 marked further, and I will show you a table in that volume marked Exhibit 4-A-1-A, under the heading, "Consolidated Loans made and paid."

Am I correct in my understanding that the bottom grouping relates to the loans made and paid for the Michigan National Bank as a whole for the year 1952?

A. That is correct.

Q. And then there are certain sub-headings, FHA mortgages, GI mortgages, and other mortgages; is that correct?

(1328) A. That is correct.

Q. And some installment loans?

A. Correct.

Q. Now, under one heading it has "Balance at start of period." What is that?

A. Under year to date 1952, this will be the figures as of December 31, 1951.

Q. That is the first column?

A. That is right.

Q. Now, the second column is a heading, "New Loans."

A. Under year to date 1952 that includes all loans made during the calendar year 1952.

Q. Then the next column, "Principal payment," would that mean the principal payments made during the year 1952 under that bottom column?

A. They represent all of the payments on the loans during the year 1952.

Q. And the last column shows, "Balance at close of period." Is that December 31, 1952?

A. That is the amount outstanding as of December 31, 1952, on the various categories of loans.

Q. And looking at Exhibit 4-A-1-A, does it appear that most of the new loans made on mortgages, GI mortgages, other mortgages, and installment loans were mostly retained by Michigan National Bank or not?

(1329) A. They are mostly retained.

Q. In fact, there is a very, very small percentage that was not retained?

A. Very small percentage not retained.

Q. Now, getting into another subject, I show you Exhibit 4-A-1-B, under the heading of "Delinquent Mortgage Loans December 31, 1952." Does that show the percentage of delinquency by number of mortgages as well as amount?

A. It does.

Q. And that has a breakdown for each of the offices, and then a total?

A. Right.

Q. And I am correct, am I not in stating that there were 1.30 per cent of the total number of mortgages delinquent as at December 31, 1952?

A. That is correct.

Q. And there was 1.14 per cent delinquent in amount as of December 31, 1952?

A. That is correct. That includes the total amount of the mortgage; not just the payment that is past due, but the total.

* * * * *

(1331) Q. Now, in connection with the operation of your banking business, Mr. Fairles, you were asked by Mr. Dexter what funds are used in the operation of the banking business making loans; does the Michigan National Bank employ and use its capital and surplus funds for the operation of the loan phase of its business?

(1332) A. We use all of the funds, capital, surplus, undivided profits, reserves, deposits, everything.

Q. And a deposit is shown as a liability?

A. It is.

Q. And you are obligated to repay it to the depositor?

A. We are.

Q. But that is not so of your capital account?

A. No, it is not.

Re-cross Examination

By Mr. Dexter:

Q. I understand, Mr. Fairles, you have had a number of stockholders in 1952, of which six owned a large block of that stock, is that true?

A. That six owned a large block of the stock?

Q. Yes.

* * * * *

A. Which was preferred that took over the stock previously owned by the RFC.

Q. I see.

A. It wasn't the common stock.

Q. Well, can you state, Mr. Fairles, how many stockholders owned controlling interest in the Michigan National Bank in (1333) 1952?

A. How many it would take to make 51 per cent?

Q. Yes.

A. I can't tell without figuring it out.

Q. Would that be a small number of their total shareholders?

A. (Pause.)

Q. Here is Exhibit 204; that might help you.

A. Well, the exhibit here indicates that three per cent in number owned 62 per cent in par value.

Q. Do you know who those three per cent are?

A. There are 68 of them. I cannot name them all off. At this time, December 31, 1952, there were 68 stockholders with a thousand shares or more.

Mr. Klein: Would you read the rest of that?

A. And there were 1685 shareholders. They owned from one to a hundred shares. 524 shareholders that owned from 100 to 1000 shares, and there were 68 shareholders owning 1000 shares or more, for a total of 2277 shareholders as of that time.

The Court: What was the par value of each share? $10?

A. I can give you the par value and the percentages, too. The precentages, the 1685 represented 74 per cent of the total. The 524 represented 23 per cent. The 68 represented 3 per cent. The totals 100 per cent. And then of the par (1334) value, the 1685 represented 486,-605. The 524 represented 1,421,072, and the 68 represented 3,093,323, for a total of 5,000,000 par value at

that time, and the percentage for the total of the par value was 10 per cent for the 486, 28 for the 1,421,000, and 62 per cent for the 3,092,000, for a total of 100 per cent.

Mr. Klein: That doesn't show the market value?

A. No, it doesn't here. Oh, yes, it does. The market value down below here during the year 1952 was $34 to $36 a share, for the year 1952.

* * * * *

SPLAN, THOMAS, was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

Q. What is your name?

A. Thomas Splan.

Q. Where do you live?

(1335) A. Allen Park, Michigan.

Q. What is your occupation?

A. I am an auditor for the Michigan Department of Revenue.

Q. How long have you worked for the Michigan Department of Revenue in that capacity?

A. Seven years.

Q. Would you describe your professional training?

A. I audit large and small corporations for the various taxes administered by the Department of Revenue.

Q. Of the State of Michigan?

A. Yes.

Q. In other words, you have the duties of general audit assignments of the Department of Revenue and examine various books and records of various corpora-

tions in Michigan for the purpose of determining the correctness for Michigan tax purposes?

A. That is correct.

Q. Did you make an examination of various savings and loan associations in the state?

A. Yes, sir.

(A document entitled "Conventianal Loans Made by Associations in 1952 With Term of 10 Years or less and Where Amount Loaned Was 60% or Less of Appraised Value of Security," was marked Exhibit 200 by the reporter; a document (1336) entitled "Summary of Conventional Loans Made by Association in 1952 with Amount of Loan Based on Appraisal of 60% or Less and Terms of 10 Years or Less," was marked Exhibit 200-A by the reporter; document entitled "Allocation of Conventional Loans on Security with Appraised Value of 60% or Less of Loan and Term of 10 Years or Less to Union, Saginaw, and First Savings & Loan Association Loan Classifications," was marked Exhibit 200-B by the reporter; document entitled "Summary and Breakdown of Conventional Loans Made by Savings and Loan Associations in 1952, and Totals of FHA, GI, and Others Made in 1952," was marked Exhibit 200-C by the reporter; and a document entitled "Consolidation of Michigan State Taxes Paid in 1952 by Savings and Loan Associations [Other Than Franchise Tax, Intangibles Tax, Examination Fees, and Tax on Increase in Authorized Capital]," was marked Exhibit 208-A by the reporter).

Q. (By Mr. Dexter): I would like to show you Exhibits marked 200, 200-A, 200-B, and 200-C, and ask you to identify those exhibits.

* * * * * *

A. Exhibit 200 is conventional loans made by associations in 1952 with the term of ten years or less and

where the amount (1337) of loan was 60 per cent or less of the appraised value of the security.

The Court: How much or less?

A. 60 per cent.

Q. (By Mr. Dexter): And where did you obtain the information that you used to compile Exhibit 200?

A. From Exhibit 200-A and 200-C.

Q. And would you explain what Exhibit 200-A is?

A. Exhibit 200-A is a summary of conventional loans made by associations in 1952 with the amount of the loan based on the appraisal of 60 per cent or less and terms of ten years or less.

Q. And that was 16 particular associations that are referred to and listed on Exhibit 200-C?

A. Yes, sir.

Q. And that Exhibit 200 would pertain to the same 16 associations?

A. That is correct.

Q. Would you explain Exhibit 200-C?

A. Exhibit 200-C is a summary and breakdown of conventional loans made by associations in 1952, and total of FHA, GI, and others made in 1952.

Q. What was the source of information for Exhibit 200-C?

A. The books and records of the association.

Q. In other words, you compiled Exhibit 200-C by examining the (1338) actual books of original entry of the 16 building and loan associations named therein?

A. Yes, that is correct, with the exception of First Savings and Loan in Saginaw.

Q. And what did you use to get your information for First Savings and Loan of Saginaw?

A. The records of the Savings and Loan Division of the Secretary of State's office.

Q. In other words, you used the reports filed there with them, the examination reports filed with the Secretary of State's office, for your information for that association?

A. That's correct.

Q. Now, I notice on Exhibit 200-A you have a star notation under Saginaw and First (Saginaw) and Union Savings & Loan.

A. Yes, sir.

Q. What is the nature of that starred breakdown?

A. The particular savings and loan didn't have the necessary records to determine these classifications in which these figures appear.

Q. In other words, Exhibit 200-A shows a breakdown of the summary of conventional loans made by the associations in 1952 with the amounts of loans based on appraisal of 60 per cent or less and terms of 10 years or less in terms of the purpose of loans?

A. That is correct.

(1339) Q. That is, construction, purchase, refinance, improvements, and others, correct?

A. Correct.

Q. And did the original records from which you obtained the information as to the length of term and percentage of appraised value for the Union Savings & Loan and the First Saginaw and Saginaw Savings and Loan contain this type of breakdown—that is, construction, purchase, refinance, improvements and others?

A. No.

Q. But did the total loans of those associations show those breakdowns?

A. In total, yes.

Q. And that is indicated on the breakdowns appearing in Exhibit 200-C, is it not?

A. Yes.

Q. Now, would you explain the method you used in making a breakdown of these type of loans shown on Exhibit 200-A, for these three associations, that is Union of Lansing, First Saginaw and Saginaw?

A. The basis, it appears on schedule or Exhibit 200-B and it is prepared from 200-A and 200-C.

Q. In other words, you used 200-B to get the breakdown of the loan classifications used in 200-A?

A. Correct.

(1340) Q. For these three associations?

A. That is correct.

Q. And what kind of breakdown or allocation method did you use?

A. The percentage of each classification to the total in each case in which it was applied to the total that appears on Exhibit 200-A.

Q. With the exception of the computation inserted in these exhibits by Exhibit 200-B, these exhibits were all prepared from the original records of the savings and loan associations with the one exception that you noted?

A. That is correct.

Mr. Dexter: I would like to offer into evidence these exhibits with the understanding that the plaintiff would have the right to examine the original books and records of the savings and loan association from which these exhibits were prepared.

* * * * *

(1341) Mr. Klein: I would like to ask the witness a question about this.

This is merely as to the introduction. Looking at Exhibit 200, do I correctly understand this is a tabulation of conventional loans made by these associations in 1952?

A. Yes.

Mr. Klein: And that is in column A, that is the total amount of conventional loans?

A. That is correct.

Mr. Klein: Column B you show the total amount of loans with terms of ten years or less where the amount was 60 per cent or less of appraised value. In other words, both those conditions had to obtain before you reduced it down to that column B?

In other words, you didn't separate those which had a loan of ten years or less unless it also had an appraisal of 60 per cent or less. You combined both of those factors, didn't you?

A. If I understand your question—

Mr. Klein: In other words, if a loan were ten years or less but was based on an appraisal of more than 60 per cent, you wouldn't include it in there?

A. I would have included it.

Mr. Klein: You would have included it?

(1342) A. Yes.

Mr. Klein: But if it was less than 60 per cent, you would not have included it?

A. That is correct.

Mr. Klein: Even though it was ten years or less?

A. That is right.

Mr. Klein: In other words, it had to be ten years or less and it had to have an appraisal of 60 per cent of the appraised value?

A. Yes.

Mr. Dexter: In order that the record may be clear on this, I think that column B on Exhibit 200 shows the amounts where either the term was over ten years or the appraised value was over 60 per cent.

Mr. Klein: It is the other way around.

The Court: Let us find out. The witness at one time answered it, if I understood his answer correctly, as if it could be either/or, and at another time, if I understood his answer correctly, it had to be both. Let us find out which he meant.

Mr. Klein: It had to be ten years or less, didn't it?

A. Yes.

Mr. Klein: And in addition, you put another (1343) condition that the amount of the loan had to be 60 per cent or less than the appraised value?

A. That is correct.

Mr. Klein: Both of those conditions had to obtain before you put it in column B? It had to be ten years or less and the loan had to be 60 per cent or less than the appraised value, is that correct?

A. Yes, I think it is correct. I really do. Maybe I misunderstood.

The Court: Suppose the term on one was nine years but the percentage of the appraised value was 70 per cent, would it be in here?

A. It would not be in here.

Mr. Klein: And if it was 60 per cent or less but the term was more than 10 years, it wouldn't be in there?

A. That is correct.

The Court: That is true. However, the heading is a little confusing.

Mr. Klein: It should be "and."

A. That is right, it should be "and," that is correct.

Mr. Dexter: Your Honor, it apparently should be "and."

The Court: We will then change that word or Mr. Dexter will change it and the record will show that he has changed it in open court. The heading of Exhibit 200, (1344) under column B in the second line in the last word there is "or" and it should be "and."

It now reads "or less and where the amount loaned was 60 per cent."

Mr. Klein: Did you make a tabulation of the amount of the building and savings loans which were ten years or less irrespective of the appraisal, of the loan to the appraisal?

A. I don't think I have that figure in total, but I certainly can get it.

Mr. Klein: You can get it?

A. I think I can, yes.

Mr. Klein: And do you have a separate computation of the amount of loans made by building and loans where the appraised value of the amount of the loan was 60 per cent or less irrespective of the term of the mortgage?

A. I don't know. I think we can break it up.

Mr. Klein: And do you have a breakdown of the terms of the loan, eleven years, twelve years, thirteen years, and so forth, or are you just interested in the ten year situation?

A. No, I don't have a breakdown of total loans.

Mr. Klein: You did not break it down if it was more than ten years; you made no separate computation whether it was more than—

(1345) Mr. Dexter (interposing): Your Honor, I believe that Mr. Klein is permitted to make an examination of the source of the information and what they used, but he doesn't need to go out and examine the witness in reference to what he did not do.

The Court: I think at this point—

Mr. Klein (interposing): That is correct. On that point, the objection is well taken.

Column C is the percentage of figure D to A, is that correct?

A. Yes.

Mr. Klein: What does D purport to show?

A. ~~This is~~ the percentage of construction to—

Mr. Klein (interposing): By category?

A. A to B.

Mr. Klein: How do you get only 6 per cent to the total? Shouldn't that be 100 per cent total of all classifications?

A. No, because actually you are figuring this to that, that to that, and so on. It will never come out to 100 per cent. They will not work out.

Mr. Klein: You have five classifications and five equals—that is all the loans, so shouldn't this equal 100 per cent?

A. No, you are figuring, so to speak, apples to oranges. It (1346) would never work out to 100 per cent. You see, in column B you have one millian six hundred seventy some thousand dollars.

Mr. Klein: Of dollars.

A. That is right, and that only amounts to I would say—this total here amounts to six per cent of this total, and for that reason—

Mr. Klein: (interposing) But you have got that 6 per cent under the column D. How is column D only 6.4 per cent when you have only five classifications? Why isn't that 100 per cent?

A. They just won't work out.

Mr. Klein: What are you comparing in column D?

A. I am comparing each classification.

Mr. Klein: You just pick out a figure and tell me—

Mr. Dexter: (interposing) Your Honor, he is cross examining the witness.

Mr. Klein: No, I want to understand this exhibit. I don't understand D at all.

Mr. Dexter: D, for your information, is captioned "The percentage of each category in column B to total

of column A." In other words, 1.9017 per cent of the total construction loans made by the 16 savings and loan associations in 1952 examined constituted loans (1347) that were both under ten years, ten years or under, and 60 per cent less of appraised value.

The Court: And were construction loans.

Mr. Dexter: And were construction loans.

The Court: I think that is plain enough.

Mr. Klein: OK.

Now, looking at Exhibit 200-A, do I correctly understand this is just a breakdown by associations getting the totals which appear in Exhibit 200-A?

A. Yes, in column B, 200.

Mr. Klein: All 200-A is is a breakdown by the associations to get your figures for 200?

A. Correct.

Mr. Klein: And the star, you said those categories weren't available on certain institutions?

A. That is correct.

Mr. Klein: But you nevertheless made your determination of percentages without that?

A. That is correct.

Mr. Klein: How did you do that?

A. On the basis of 200-B.

Mr. Klein: Well, what did you do there?

A. You notice here in column A, Exhibit 200-B, are the total loans made by this particular loan association.

Mr. Klein: Yes.

(1348) A. Column B represents a percentage of these classifications to the total loan of that association.

Mr. Klein: To the total loan?

A. That is right. In other words, construction to the total was 43.0804 per cent, and this 43.0804 per cent was applied to the total in column C.

Mr. Klein: What is column C?

A. Column C is the total loans, to which there was ten years or less and appraisal of 60 per cent or less. In other words, pick that total up from 200-A.

Mr. Klein: I thought you said you didn't have the figures available.

Mr. Dexter: Now—

Mr. Klein: (interposing) Let the witness answer, please.

A. The totals were available.

Mr. Klein: The totals were available?

A. Yes, sir.

Mr. Dexter: Your Honor, I think the trouble here, when you refer to the total, Mr. Splan, you are talking about the total of the loans involved in the particular category or caption of the exhibit, right?

A. That is true.

Q. (By Mr. Dexter): So when you talked about total loans, you meant the total loans of the association of the (1349) conventional type that is within this classification of under ten years, or ten years or under, or 60 per cent of appraised value or under?

A. That is correct.

Mr. Dexter: And those exhibits carry those captions, your Honor.

Mr. Klein: Your star, you say, "Breakdown of loans in both categories as to percentage of appraised value and term of loan, not available," is that correct?

Now, how did you build up—

A. (Interposing): No, no. This—

Mr. Klein: (interposing) We are referring to Exhibit 200-A for a minute.

A. That is true.

Mr. Klein: And then you say the allocation is computed on the basis of ratio of association total conventional loans made, and you refer to 200-B?

A. Right. That is true.

Mr. Klein: Now, how do you get the determination of whether it was ten years or more of appraised loans to value of 60 per cent or less out of 200-B?

A. Sir, we were able to examine the particular loans in the association. We were not able to see which classifications they fell into in these three particular instances, and this was the basis of this work sheet here.

(1350) Now, is he asking for the workup on this on the total? Is that what he is asking for?

Q. (By Mr. Dexter): I think the confusion, Mr. Splan, results from the fact that we are actually dealing with two classifications here. One is the classification of a loan according to its term or percentage of appraised value, and the other is a classification of a loan in terms of the purpose of the loan—that is, whether it is construction, purchase, refinance, improvement or other—and as to these three associations you have on Exhibit 200-B, you were able to determine from the books and records the classification of the loans in terms of the length of term of the loan and appraised value, were you not?

A. That is correct.

Q. But you were not able to break down those particular associations' loans as to the classification of purpose of loan—that is, construction, purchase, refinance, improvement and others?

A. That is correct.

Q. And then in order to make your Exhibit 200-A include all of the associations, you arbitrarily determined, did you not, that the percentage of total loans that fell within the classification of term or appraised value was the same as the total conventional loans; so if you had, for example, total construction loans of the Union Association here at (1351) $1,580,825, you took

that $1,580,825 and were able to break that down into the total of each classification of loan; is that correct?

A. Yes, sir.

Q. But you were not able to break down the $39,100 figure on Exhibit 200-B into the construction, purchase, refinance, improvements or other classification, right?

A. That is correct, yes, sir.

Q. So that you arbitrarily broke that down in the same way that the books and records showed the breakdown of total conventional loans?

A. That is correct.

The Court: I understand your testimony. I don't know whether I understand the witness or not.

Mr. Klein: I would say it is as clear as mud at this point, as far as I am concerned.

The Court: I think I understand Mr. Dexter's testimony. I don't know whether he is familiar with the situation except by hearsay or not.

Mr. Klein: Did you get the figures on 200-B from the books of the Union Savings & Loan in this case?

A. Yes.

Mr. Klein: All the figures?

A. This total and this total (indicating).

Mr. Klein: You are pointing to (A) and (C)?

(1352) A. That is correct, sir.

Mr. Klein: But you did not get those figures on (B)?

A. No, sir.

Mr. Klein: Where did you get those figures in column (B)?

A. Those are computed. I computed them.

Mr. Klein: From what?

A. From column (A).

Mr. Klein: In respect to what?

A. To the total in column (A).

In other words, construction, $680,400, is 43.04 per cent of 1 million 580.

Mr. Klein: All right. Where did you get the 16,000 figure?

A. The figure appearing here?

Mr. Klein: Yes.

A. In column (C), 33.04 per cent applied against $39,000.

Mr. Klein: Where did you get the 39,000 figure?

A. We were able to work that figure up from the original books and records in theat particular association, but we were not able to come up with these particular figures here within these five classifications, because they didn't have the books and records—that is, they didn't have the breakdown.

(1353) Mr. Klein: They are just assumed figures, then?

A. These five, yes, or column (C).

Mr. Klein: Anything in column (C) is assumed except the total?

A. That is correct.

Mr. Klein: But you couldn't get the breakdowns?

A. That is correct.

Mr. Klein: And how does that affect 200-A, then?

A. Well, again, the total, it doesn't affect the total here, only up in here, the classifications, and these totals here it would affect.

Mr. Klein: That is your classification.

* * * * *

(1354) We have no objection to the offering of these exhibits except, of course, we have not had an opportunity to check them and whether or not these books will be made available to us by the building and loan associations, I don't know.

Mr. Dexter: I will check and they will be:

* * * * *

Q. (By Mr. Dexter): Turning to Exhibit 200, Mr. Splan, what does that exhibit indicate?

A. (Pause.)

Q. Does it show that of the total conventional loans made by the associations in 16 associations listed on 200-C, that 6.4 approximately of their total loans were for a term of ten years or less or appraised value of 60 per cent, I mean, a term of ten years or more or an appraised value of more than 60 per cent?

A. You should reverse that, the term of ten years or less and an appraised value of 60 per cent or less.

Q. And that is what that percentage figure then indicates?

A. Yes.

Q. And it would show, then, that 6.4 per cent approximately is broken down to classification of the particular loans?

A. Yes, sir.

Q. Construction would show that 1.9 per cent approximately was the kind of loan that fell within these two classifications?

(1355) A. Yes, sir.

Q. And purchases was 1.25 approximately?

A. Yes, sir.

Q. Refinancing .78 per cent, and improvements approximately a half per cent?

A. Yes, sir.

Q. And others, now by that you mean other purpose loans?

A. Yes, sir, other purpose secured by real estate.

Q. And that would be one, or approximately two per cent. Now, turning to Exhibit 200-C, did you include

in the computation in 200 the loans there characterized as others, FHA Title I and Title XII?

A. No, sir.

Q. You did not include your FHA and GI loans?

A. That is correct.

Q. So that it is a breakdown of the total conventional loans by each association?

A. That is true.

Mr. Klein: It doesn't include Title I either?

Mr. Dexter: Title I is separate there, that is right.

Q. (By Mr. Dexter): And could you state by looking at the exhibits what portion of the Title I loans are to the total improvement loans? Would that be about 25 per cent?

A. Yes, I think it would be slightly less than 25 per cent.

(1356) Q. Slightly less than 25 per cent. I would like to show you, Mr. Splan, an exhibit marked 208-A, and will you explain that, please?

A. Exhibit 208-A is a consolidation of Michigan state taxes paid in 1952 by savings and loan associations for loans other than franchise tax, intangibles tax, examination fees, and tax on increase in authorized capital.

Q. And did you obtain those tax figures from the associations or from the official files of the State of Michigan?

A. Yes, sir.

Mr. Dexter: We will offer this, your Honor, subject to the plaintiff's right to check the accuracy.

Mr. Klein: No objection, subject to check.

The Court: Received.

Mr. Dexter: That is all, Mr. Splan, as long as the Court understands these exhibits.

Mr. Van Zile: Could I ask one question? That relates simply to mortgages that were made in 1952?

A. Yes, sir.

Mr. Van Zile: Not mortgages held?

A. No, sir.

Mr. Van Zile: Mortgages made.

The Court: That is the 200 series?

Mr. Van Zile: 200 series.

(1357) *Cross Examination*

By Mr. Klein:

Q. Referring to Exhibits 200, 200-A, B and C on the Detroit & Northern, you have the Flint office only, as I understand?

A. Yes, sir.

Q. And the Union, the Lansing office only?

A. Yes, sir.

Q. Now, did I understand you to say you made a list of the term of loans above ten years, your work papers?

A. No, sir.

Q. Did you look at any that had ten years and six months?

A. Yes, sir.

Q. Did you make a list of them?

A. No, sir, nothing above ten years.

Q. And those that were eleven years?

A. No, sir.

Q. Those that were eleven and a half years?

A. No, sir.

Q. Or twelve years?

A. No, sir.

Q. That didn't even interest you?

A. No, sir.

Q. And did you make a separate list of those where the loans in ratio to the appraised value were 60 per cent or more but the mortgage, the term of the loan was ten years or less?

(1358) A. No, sir.

Q. That didn't interest you either?

A. No, sir.

Q. Did you make a computation of the interest rate on these mortgages? Did that interest you?

A. No, it didn't.

Q. It did not?

A. No.

Q. Do you recall all the interest rates?

A. Generally, yes.

Q. Some of them were six per cent, weren't they?

A. Yes.

Q. These building and loan mortgages, weren't they?

A. Yes.

Q. And did you make a computation of the term of the loan referring to Exhibit 200-C of the FHA and GI loans?

A. How do you mean, sir?

Q. Well, the term of the mortgage.

A. No, sir.

Q. You don't know whether they are fifteen, twenty or twenty-five years?

A. No.

Q. And did you make a note of the building and loan interest rates under those mortgages?

(1359) A. FHA, sir?

Q. FHA or GI.

A. No, sir.

Q. And getting back to Exhibit 200 where you are talking about the term of the mortgages, did you bother to make a computation of the average term of all of the mortgages of each—

A. (Interposing): No.

Q. You weren't interested in that, whether it was eleven years or twelve years or ten and a quarter years?

A. No.

Q. It could have been ten and a quarter years, couldn't it?

A. I don't know.

* * * * *

(1360) Q. (By Mr. Klein): Do you know if the average is more than ten and a quarter years of these loans?

A. No.

Q. You have no idea?

A. No.

Q. And you don't know whether the average loan to the appraised value was on the average, do you?

A. No, I don't.

Q. Did you say you could work that data up pretty quickly?

A. I don't know, sir.

Q. I think I asked you before about it, and you said you thought you could get it.

A. I couldn't on the total, no, sir.

Q. Could you by groups?

A. I don't think I could even do it that way. Frankly, I could try but I don't think I could.

* * * * *

Q. (By Mr. Klein): Did you make any notation if the mortgage (1361) was for more than a ten year term, did you make any notation of the term from your work papers?

A. No.

Q. And if the mortgage loan was more than 60 per cent of the appraised value, did you make any note?

A. No.

Q. You didn't make any notes at all?

A. No, sir.

Q. Did you make any notes where one condition applied but not the other?

A. Yes.

Q. Have you got that table here?

A. If they were both less than ten or less than sixty, I don't have it with me but I can get it.

Q. Well, the one or the other applies on this. The question is if the loan is for ten years or less but the amount of the loan was sixty per cent, was more than sixty per cent of the appraised value.

A. I wouldn't have that information.

Q. Or the converse?

A. No, sir, I wouldn't have that information.

Q. You don't have it?

A. I have the detail.

Q. You only have the detail for this limited exploration you made?

(1362) A. Yes, sir.

* * * * *

DOTY, ETHAN, A., was thereupon called as a witness on behalf of the defendants, and, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

Q. Please state your name and present occupation.

A. Ethan A. Doty, Director of Building and Loan Division, Michigan Department of State.

Q. And how long have you been so employed?

A. As an examiner since 1937 to 1949, and as Director of the (1363) Division since.

Q. Has your office made an interpretation of the power of the state savings and loan associations to pay dividends from the savings and loans' reserve and undivided profits accounts?

A. Yes.

* * * * *

(1364) Q. (By Mr. Dexter): Let me ask you this, Mr. Doty: Is this (1365) interpretation involved in your office's administration of the Savings and Loan Division of the Secretary of State's office?

A. Yes, it is.

Mr. Klein: Under what section?

A. Section 24 of the Building and Loan Law, Act 50, Public Acts of 1887 as amended.

Q. (By Mr. Dexter): Would you give that interpretation, Mr. Doty?

A. The Building and Loan Division has interpreted the provision for the payment of the dividends under Section 24 that dividends cannot be paid out of anything else except current earnings, one exception being that in the case of liquidation or voluntary dissolution, shareholders would then have a legal claim to undivided profits reserve after the payment of all creditors and after the payment of all expenses of liquidation, but only then.

Q. Do you know how long this interpretation has been that you could not pay anything on savings share accounts out of reserves and undivided profits except earnings in a current period?

A. It was in effect when I joined the Division in 1937. Senior examiners at that time informed me that it had been the interpretation for many, many years prior thereto, and I have found in the files of the Division a general letter that was sent to all associations in 1933, in which a (1366) statement to that effect was made.

Q. And this interpretation was in effect in 1952?

A. That's correct.

Q. And do you know what the federal practice was in 1952?

A. My understanding—

Mr. Klein (interposing): Just a moment. Do you know?

Mr. Dexter: I asked him, do you know?

A. Yes, I know.

Q. (By Mr. Dexter): Could you state what that is?

Mr. Klein: How do you know, sir, may I ask?

A. By virtue of exchange of information between the State and Federal supervisory authorities, in which considerable fine details of supervision must necessarily be exchanged.

Q. (By Mr. Dexter): Would you now answer the question, Mr. Doty?

A. What was the question again?

Q. What was the Federal practice in 1952?

A. The same as the State; that dividends could only be paid out of current period earnings.

Q. Now, in 1952, what did building and loan association shareholders in Michigan receive on the withdrawal or redemption of their savings share accounts?

A. They received the principal balance plus credited dividends on the savings share account involved.

Q. That would be the exact amount they paid plus the credited (1367) dividends?

A. That is correct.

Q. Have you made an examination of Exhibits 36-A through 36-O introduced in this cause, the reports of the associations?

A. Yes, I believe those are the monthly reports for 1952 of the State chartered associations involved.

Q. And it is the 16 associations involved in this litigation?

A. I have to confine mine to the state chartered.

Q. Now, you recall that there is an item on these exhibits captioned, "Total withdrawable or free shares." Can you state what is the meaning of this caption?

A. Withdrawable or free shares is the term which applies to the saving share accounts of the shareholders, the principal and credited dividends of which may be withdrawn at any time upon request or upon application of the shareholder.

Q. A comparable caption appears on the annual reports filed by the Michigan Savings and Loan Associations with your office for the year 1952, which are Exhibits 37 through 37-P-1, for the associations involved in this litigation. Does that caption have the same meaning as the caption on the annual reports that you just referred to?

A. Exactly the same meaning as it appears on monthly reports and on the annual report.

Q. Now, again referring to Exhibits 37 through 37-P-1, what type of loan does your office require to be entered under (1368) the caption, "Construction Loans"?

A. All loans on which the association has made a prior commitment to disburse loan proceeds as various stages of the construction are completed.

Q. And are all such loans secured by a first mortgage on the specific property on which the home is being constructed?

A. Yes, first mortgage loans on real property.

Q. Referring again to the same exhibits, has your office examined the loans that are generally included in the term "other purpose loans," on such exhibits?

A. Yes, that is a normal part of the field examination.

Q. Do you have personal knowledge of the general findings of these examinations?

A. Yes, I review these examination reports.

Q. And did you review the reports for the year 1952?

A. I did.

• • • • •

(1372) Q. (By Mr. Dexter): Now, are all of the other purpose loans secured by real estate mortgages?

A. They are by first mortgage loans.

Q. I show you a document—

Mr. Dexter (To the reporter): Will you mark this (1373) as Exhibit 216?

(Whereupon a document entitled "Capital Turn-over, Years 1950, 1951, 1952, and '53" was marked as Exhibit No. 216 for identification by the reporter.)

Q. (By Mr. Dexter): I hand you a document, Mr. Doty, marked Exhibit 216, and ask you to identify that, please.

A. This is a schedule reflecting share capital turnover for the nine state chartered associations, the share of capital turn-over for the years 1950, 1951, 1952 and 1953. It was prepared from the records in my office under my supervision on August 20, 1958.

Q. Now, are those records from which you prepared that exhibit, Mr. Doty, available to plaintiff for examination if they want to?

A. They are in my office and will be made available for inspection by the plaintiff.

Mr. Dexter: I would like to offer Exhibit 216 into evidence.

Mr. Klein: No objection.

The Court: Received.

Q. (By Mr. Dexter): Now, Mr. Doty, are you familiar with the character and purposes and practices of the Michigan savings and loan associations in the early 1930's?

A. I would say yes.

Q. And in the year 1952?

(1374) A. Yes.

* * * * *

(1376) Q. (By Mr. Dexter): Mr. Doty, could you state whether or not the business activities, the kind of thing that savings and loan associations do, has changed in any substantial way from 1937 through 1952?

A. In my judgment, there has been no substantive change in the character and operations of savings and loan associations since 1937 to and through 1952.

Neither has Section 1 of the Building and Loan law, setting forth the intents and purposes of a savings and loan association, been altered during that period.

Q. In other words, their basic purposes have been the same, to your knowledge?

A. To my knowledge, yes.

Q. And their basic practices have been the same, to your knowledge?

A. That is correct.

Q. And are they serving the same kind and class of people in terms of the business that they do?

A. They are.

Mr. Klein: Do you know?

A. Yes, I know. They are serving the needs of people who are applying for a home mortgage loan.

Mr. Klein: Do you know the economic classes of the (1377) people? Do you, Mr. Witness? Do you know what their income ratio is, their value, their net worth?

A. I have reviewed a lot of credit reports in the mortgage loan document files, and I failed to see there are any in there of great wealth.

Mr. Klein: All right.

Q. (By Mr. Dexter): And has there been any great substantial change in the wealth of these people from 1937 through 1952?

A. Not any more so than the normal increase in income that many classes of people have enjoyed during that period.

Q. Due to the raises of the standard of living and inflation?

A. Or otherwise.

Mr. Dexter: That's all.

Cross Examination

By Mr. Klein:

Q. Mr. Doty, do you know the term—that is, the term of mortgages—by years that was being granted by building and loan associations in 1937—that is, the term?

A. The customary terms of the mortgage loans in 1937, I would say, would average about twelve to fifteen years.

Q. And that was true in 1937 also?

A. Yes.

Q. And the interest rate?

A. Interest rates, of course, vary substantially from locality (1378) to locality.

Q. And the size of the mortgage?

A. The size of the mortgage also varies.

Q. What was it in '37, if you recall, and what was it in '52, if you recall, average, from your great knowledge as an authority on the subject? Do you recall?

• • • • •

A. The question calls for a dollar answer, which I would prefer to consult my records before attempting to answer.

Q. (By Mr. Klein): Well, what is your best recollection? You have an expert knowledge. Do you have any recollection of the size of the mortgage granted in '37 as compared with '52?

A. I think maybe the average in '37 would probably approximate fifty-five hundred, and maybe sixty-five hundred, seventy-five hundred in '52.

(1379) Q. Now, as far as encouraging home ownership, is there any difference to a borrower on a home loan mortgage whether he gets a mortgage of the same term and interest rate from a savings and loan association than he would get from a commercial bank, assuming the same terms, the same interest rate and the same—

* * * * *

A. I have relatively limited knowledge of the operation of the banks as pertains to the mortgage loan business.

Q. (By Mr. Klein): Well, Mr. Doty, assuming an identical mortgage by a commercial bank as to terms, interest rate and monthly amortization, in your opinion is the borower any more or less favored when he takes the identical mortgage from a building and loan association than when he takes it from the commerical bank under those facts?

* * * * *

(1380) A. (Interposing): Did I understand you to say the terms were the same?

Q. I am assuming identical terms for my question here.

* * * * *

A. Unless there is a decided difference in the original loan cost or service fees, I think the mortgagor would be about evenly served.

Q. Whether he took it from the bank or from the savings and loan association?

A. Yes, factually and accounting-wise, expense-wise.

Q. And if the building and loan association in granting the mortgage predicates its granting the loan on value of the property, appraised value, and the financial worth of the mortgagor, and assuming the bank bases its granting of the loan on the same standard, is there any difference whether the mortgagor takes the loan from the savings association or the bank?

* * * * * *

(1381) A. Unless the savings and loan association offered a better amortization term—

Q. (Interposing): I am assuming the same. There is none, but if they are the same, there is no difference.

* * * * *

Q. (By Mr. Klein): Will you go along with that answer, Mr. Witness?

A. I would say that the mortgagor would be the same either case.

Q. Now, I suppose in your position you have done a lot of reading on savings and loan associations, haven't you?

A. Yes.

* * * * *

(1382) A. Yes, sir.

Q. And have you ever read anything, any articles, by Norman Strunk, Executive Vice-President of the United States Savings and Loan League?

A. Yes.

Q. And do you know of his general reputation in the business of savings and loan associations?

A. Yes.

Q. Is it good?

A. Yes.

Q. Is he an informed man on that subject?

A. I would say so.

* * * * *

(1383) Q. (By Mr. Klein): My question is, Mr. Doty, do you from your knowledge of building and savings and loan associations in Michigan agree or disagree with the following statement of Mr. Norman Strunk, Executive Vice-President of the United States Savings and Loan League:

> "The savers using the facilities of our institutions have a slightly higher income than those which typically use banks, though the differences are (1384) not significant."

* * * * *

A. Well, I would be inclined to disagree with Mr. Strunk.

Q. (By Mr. Klein): And do you also disagree with the witnesses from the building and loan associations in this very case (1385) you have testified as Mr. Strunk has indicated for the year 1952 about their own institutions?

Mr. Dexter: Your Honor, I don't believe that the witnesses have so testified.

Mr. Klein: I think so, and I will read you the parts, if you wish.

Q. (By Mr. Klein): Do you disagree with them?

A. I disagree with the statement that the savings and loan mortgagors—

Q. I didn't ask about the mortgagors. I said "savers."

A. Well, savers.

Q. Shareholders versus savings depositors in banks.

A. From my own observation of the character of savings and loan, savings shareholders are that they are not much different from anyone else engaged in a thrift savings program, whether it be in a bank or an insurance corporation or any place else that they are engaged in a savings activity.

Q. And in your opinion, as a man experienced in the savings and loan field, would you agree or disagree with the statment of Horace Russell, General Counsel, in his book on "Savings and Loan Associations," page 1, in which he says:

> "The savings and loan association is frequently referred to as 'the poor man's bank.' However, it (1386) will be noted that the average account in them is higher than the average savings account in commercial banks, mutual savings banks or postal savings and is probably higher than the average cash of insurance policies."

Do you have an opinion on that, sir?

A. I could not form an opinion on that because I am not familiar with the average balance of a savings account in banks, insurance corporations and postal savings.

Q. Do you agree in your opinion on this subject, do you agree or disagree with the view expressed by Mr. Norman Strunk in an article appearing in April, 1954, Burroughs Clearing House, as to—

* * * * *

(1387) Q. (By Mr. Klein): And the question that I would like is your opinion of whether or not, "we the building and loan associations have equipped ourselves on a nation-wide basis to serve the middle class"—

A. I wouldn't agree with that in its entirety for the simple reason that they have equipped themselves to service and serve the lower income group, the middle class or anyone else in need of home mortgage, home financing.

Q. In other words, they are equipped to handle anyone, they are interested in getting a mortgage from anyone who applies for a mortgage, isn't that correct?

* * * * *

Q. * * * Who has a credit and a piece of property that will come within their requirements.

A. They are in the fundamental business of making home mortgage loans, if that answers your question.

(1388) Q. And that is regardless of whether the borrower is a shareholder of that association or not?

A. The statute doesn't require that the borrower be a shareholder or savings account shareholder.

Q. Would you answer the question, please?

A. What was it?

(The question was read by the reporter.)

A. The borrower automatically becomes a shareholder of one share upon being granted a mortgage.

Q. Isn't that a membership and not a shareholder?

A. I would call it a shareholder, inasmuch as they are entitled to one vote for each mortgage so held.

Q. They don't get any dividends on that share, do they?

A. No.

Q. So they are not a shareholder in the sense of investing in the association?

A. They are not investing shareholders, no. They are mortgagor members with a voting privilege.

Q. Do you agree, in your opinion, with the statement of Mr. Russell that the rate of earnings on savings is a material factor in attracting savings to building and loan associations?

* * * * *

(1389) A. These very same people that Mr. Klein refers to—Norman Strunk, Horace Russell, of the United States Savings & Loan—have also written authentic articles and published them in this U. S. Savings & Loan News and the Legal Bulletin published by the United States Savings & Loan News, to the effect that dividend rate is not the sole item that attracts savings share accounts to savings and loan associations, and they have further stated that convenience of location, prompt and friendly service has been a bigger factor in attracting savers to the savings and loan association rather than the dividend rate itself.

* * * * *

A. This is to be my opinion, is it? Did it say "opinion"?

The Court: Yes. State your opinion.

A. I don't believe so.

Q. (By Mr. Klein): And in that respect, you disagree with the testimony of the savings and loan witnesses who appeared in (1390) this proceeding, do you not?

A. I will disagree with them, yes.

* * * * *

(1391) Q. (By Mr. Klein): Are you familiar, in your work with the savings and loan associations, with the fact that since 1934 the powers of commercial banks to make loans on residences have been greatly liberal-

ized both as to term of mortgage and amortization provisions?

A. I am not familiar with any chages in the banking code.

• • • • •

(1393) Q. (By Mr. Klein): From your knowledge of savings and loan associations in Michigan, do you know whether or not in the year 1952 as compared with the year 1937 and the in between years savings and loan associations faced keener competition for residential mortgage loans from commercial banks in Michigan?

A. I would say to properly answer that I would have to check the mortgages recorded in all of the seven counties in which Michigan National Bank operates and compare them to savings and loan associations in the same area.

(1394) Mr. Klein: Would you read the question.

And would you listen very carefully, Mr. Witness, and then answer.

(The question was read by the reporter.)

A. I would say not keener competition, but continued competition.

Q. Would you have an opinion one way or another about the views expressed in the Savings and Loan Annals of 1952 of the United States Savings and Loan League, page 253:

> "Members of the committee on trends and economic policies reported that the competition of insurance companies was easier than in 1951 but that of banks and trust companies substantially keener."

Do you have an opinion on that subject?

A. No opinion.

Q. You don't agree or disagree?
A. No.
Q. But in Michigan you don't think that applies?
A. I have no opinion.
Q. You just expressed an opinion a few minutes ago.
A. You will have to restate the question, then.
Q. I said between '37 and '52.
Mr. Dexter: Isn't this '51 and '52, Mr. Klein?
A. Yes.
Mr. Dexter: Wasn't the other question '37 and '52?
Mr. Klein: Yes.

• • • • •

(1395) Q. Mr. Doty, do you know what types of savers could invest in building and loan and savings and loan associations in Michigan, including the particular ones that we have been considering in 1937?
A. What type of investor?
Q. Yes. By type I mean individuals, corporations, fiduciaries, and so forth.
A. 1937, as I recall, all types could.
Q. What do you mean by all types?
A. Those you just mentioned.
Q. That is corporations, partnerships, fiduciaries, individuals; is that correct?
A. My memory serves correctly, I believe all of those could in 1937.
Q. And that was equally true in 1952?
A. Yes.
(1396) Q. Do you recall when it was that corporations were permited to invest for the first time in savings and loan and building and loan associations in Michigan?
A. Offhand, no, I don't remember exactly when.

Q. Do you recall an opinion of the Attorney General in 1928 that mercantile corporations were not permitted to loan or invest moneys in building and loan associations?

A. The question was do I recall?

Q. Yes.

A. I don't seem to recall it at this moment.

(1397) Q. Do you know, Mr. Doty, when building and loan and savings and loan associations in Michigan were first permitted to loan money on commercial or mercantile properties as opposed to residential properties?

A. The state chartered associations are by virtue of the description in Section 1 limited to lending their funds on residential or as the language in section 1 uses homestead properties. Federal chartered savings and loan associations are permitted to lend on commercial properties and I believe that was a part of their original charters and rules and regulations back in about 1932.

Q. But the state associations are not permitted to loan money on such properties?

A. It doesn't contemplate lending on commercial properties.

Q. Do they in fact, do you know?

A. They in fact make an occasional loan on what is called a joint home and business property which the owner may have a business downstairs and occupy living quarters; homestead quarters upstairs or in an adjacent house on the same general parcel.

Q. Are you acquainted with the types of shares that the state associations may issue?

A. Yes.

Q. You are familiar with the optional savings share?
(1398) A: Yes.

Q. That is, as I understand it permits the member to invest at any time and in any amount, is that right?

A. That is correct.

Q. And he doesn't have to invest periodically, right?

A. That is correct.

Q. And it is not an installment type of share; is that correct?

A. Not specified for installment regular payments, no.

Q. Now, under Act 50 of 1870, that is the original building and loan act, it is true, is it not that the only type of share contemplated was an installment share, isn't that so?

A. That Act you refer to is Act 50 of 1887.

Q. I beg your pardon, but the original building and loan act.

A. To my knowledge—and I would like to verify this—the original Act 50, Public Acts of 1887 provides for three types of shares, installment savings shares, advance payment shares and fully paid shares rather than restricting it to only installment savings shares.

Q. Well, there is no use in arguing that point, but do you know when the optional savings share first came into being?

A. It was so many years ago and long before my time. I would have to consult the records. I know it has been a great many years ago.

Q. That is you don't know when it was?

A. Not exactly.

(1399) Q. You think it was long before 1937?

A. I would like to look at the records before I attempt to answer that. It might have been near 1937; it might have been slightly previous to '37.

Q. Now, are you acquainted with the old type association in which in order to borrow money, a person had to be an investor and subscribe to a number of shares equivalent to the amount that he borrowed, Mr. Doty?

A. Yes. If you refer to the old type sinking fund mortgage loan where that condition prevailed, I think I could say I am reasonably familiar with it.

Q. Didn't the original type of association, and by original type, I mean the type that was organized under Act 50 of 1887 contemplate that the borrower should subscribe to or be the owner of a principal amount of par value of shares equivalent to the loan which was bid off to him, isn't that true?

A. I don't recall ever reading anything like that in the original Act of 1887.

Q. Well, do you remember anything in the older type institutions that required the borrower to subscribe to shares of stock in the association?

(1400) A. Not to the extent you mentioned. Formerly, there was a share subscription to a nominal amount of shares, as I say, of a very nominal amount which theoretically and probably practically may have been a member of the association.

Q. Are you sure that this was a nominal amount in the early associations?

A. In my early experience with savings and loan, it was in a nominal amount.

Q. Well, what was your early experience, I mean, in point of time?

A. Well, around 1937.

Q. Well, you are not familiar then with what the practice was prior to 1937, is that right?

A. I have probably read it but I don't recall it at this time.

* * * * *

(1403) CARLSON, C. ARNOLD, was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

* * * * *

I would like to offer into evidence, your Honor, Exhibit 208, which is taxes paid to the State of Michigan for the year 1952 by the sixteen savings and loan (1404) associations involved in this litigation and the Michigan National Bank, including franchise or privilege tax, intangibles tax, examination fee, state unemployment tax, real property tax, personal property tax, tax on increase in authorized capital, and the use tax that was reported directly to the Department of Revenue by the savings and loan association that was licensed or those associations that were licensed under the use tax statute.

Mr. Klein: We will stipulate, your Honor, subject to our check that the figures contained in Exhibit 208 are correct. We wish, however, to point out or object to the exhibit to the extent that real property taxes are ad valorem taxes on the real estate to which both building and loan and banks are subject, national banks are subject, depending upon the value of the property in question owned by them, and the examination fees are fees for work done by the examiners in making examina-

tions. They are really not taxes in the sense of being taxes.

Neither of those two items in our opinion bear upon the issues in this case, but as far as the figures are concerned, we are willing to say all the figures are correct subject to our opportunity to check and point out any error.

The Court: This is received subject to the objection * * *

* * * * *

(1405) Mr. Dexter: Exhibit 209 we offer. It is entitled, "Data Summarized as of December 31, 1952, on the Following Named Institutions," and their names on the left-hand column, the sixteen savings and loan institutions brought in question here in this litigation, and showing the total assets, the total first mortgage loans and contracts in amount and percentage to total assets, cash and securities in amount and percentage to total assets and savings share accounts in amounts and percentage to total assets and legal reserves and other contingency reserves in amount and per cent to total assets, as well as percentage to total savings shares of these respective institutions, which consists of two pages.

Mr. Klein: We have no objection to 209.

The Court: Received.

Mr. Dexter: Exhibit 210 we offer in evidence, entitled, "Data on the Following Named Savings and Loan Associations Summarized as for 1953," which includes the sixteen associations we have involved in this litigation. It consists of two pages.

It shows a breakdown of each association as to—(1406) a breakdown of the gross income of each association as to interest on mortgages and contracts, both in amount and percentage to gross income, total interest

income broken down as to amount and percentage to gross income, net income before dividends and reserve additions, the total amount of dividends, the net income before reserve additions and net income taxes broken down as to amounts and per cent to total assets and total tax burden broken down as to the amounts, the percentage to net income after adding back dividends to the savings and loan association's income and percentage to net income, the state franchise and intangibles taxes of these associations in amount, percent to net income after adding back dividends and percent to net income.

(1407) Mr. Klein: Your Honor, in respect to Exhibit 210, we are willing to stipulate that the figures there shown are correct subject to our check. However, we object to the admissibility * * *

* * * * *

(1409) The Court: * * * So I will receive the evidence, but it will be subject to your objection.

* * * * *

(1410) Mr. Dexter: I would like to offer next an exhibit marked 211, which is entitled "Asset Analysis of Michigan National Bank as of December 31, 1952," which was taken from Exhibit 3, showing that 50 per cent of the assets of the plaintiff bank are in stocks and securities and 50 per cent are in other assets.

* * * * *

Mr. Klein: No objection to 211.

The Court: Received.

(1411) Mr. Dexter: I would like to offer Exhibit No. 212 entitled, "Michigan National Bank, Data Summarized from Copy of 1952 Operating Statement," which has previously been introduced as Exhibit 205, indicat-

ing that the gross operating income of the plaintiff back in 1952 was approximately $12 million, including interest income of approximately $11 million and that it received 21.8 per cent of its total income from interest on mortgage loans and that it earned before federal income taxes for a $10.00 par value of stock $3.99. I mean after federal income taxes, $3.99 and before federal income taxes, $8.06.

* * * * *

Mr. Klein: No objection to 212.

The Court: Proceed.

Q. (By Mr. Dexter): Have you stated your name, Mr. Carlson, for the record?

(1412) A. I did. I will state it again. It is C. Arnold Carlson.

Q. And your address and occupation?

A. Birmingham. I live in Birmingham, Michigan. I am a certified public accountant.

Q. Whom are you employed by?

A. I am with Peat, Marwick, Mitchell & Company.

Q. And where did you receive your training and education?

A. At the State University of Iowa. I received a degree of Bachelor of Science in Commerce.

Q. And did you prepare these exhibits that we have been discussing, that is Exhibits 208 through 212?

A. Yes, I did.

Q. Referring to Exhibit 208 at the bottom of the page, I noticed that the total taxes for the Capitol Savings and Loan Association and the Detroit and Northern Savings and Loan Association reflect those of all of the branches; why did you do that?

A. We did that because we found it impractical to attempt any allocation of those taxes to any specific branches.

Q. So you used the other total figures which you used in your comparative basis on the other exhibits involving the Capitol Savings & Loan Association?

A. In Exhibits 209 and 210, the total figures were also used relative to the various types of information on those two specific associations.

Q. Now, in making your tax comparison, did you include a total (1413) of state and local tax burdens based on the information submitted from the sources indicated on the bottom of Exhibit 208?

A. On Exhibit 208 is marked the letter (G) for caption "State Unemployment Tax, Real Property Tax and Personal Property Tax."

Q. I believe, Mr. Carlson, this is already in evidence, but you used the total in your comparative exhibits, the total tax shown on page 208, is that correct?

A. That is right.

Q. Now, referring to page 2 of Exhibit 209, could you state how the additions to the legal reserve and continuing contingency reserve item are recorded on federal income tax returns?

A. I will make this a general answer as to savings and loan associations. The additions to these reserves are deducted for federal income tax purposes, such additions being limited under certain provisions of the federal income tax law.

Q. Do they treat in the same way the earnings paid out on the savings share accounts, those permitted to be deducted in computing the federal income tax?

A. In other words, you ask whether the dividends paid to—

Q. Share account holders.

A. —are deducted for federal income tax purposes? They are.

Q. Turning to Exhibit 210, I notice it is stated that the operating data for—we will cross that out. Turning to (1414) footnotes 2 on page 210, it is noted that you did not include miscellaneous items in undivided profits and you state that these items do not have any material effect on operation. Would you explain that, please?

A. In our review—scratch that—in our taking of this information from the working papers at the Building and Loan Division, we did note various charges in credits to undivided profits which represented for the most part prior years adjustments and in all material respects would have no effect on the operation or ratios that haven't been determined.

Q. That was the reason for your exclusion of that?

A. Yes.

Q. Now, it is noted on footnote 3 of Exhibit 210, the Capital Savings and Loan federal income tax was $13,-250. Did you in the preparation of this exhibit find that any of the savings and loan associations involved in the preparation of this exhibit paid a federal income tax in 1952?

A. Well, our review again of these work papers indicated that no other association paid a federal income tax in 1952.

Q. Would you know the reason for that generally?

A. Well, under the federal tax law, as I stated previously, the reserves for contingencies, bad debts or whatever they may be called are in a sense a basis for the determination of taxable income. I will explain that further by stating as I have said that additions to such reserves are allowable (1415) to these reserves as long as these reserves do not exceed a certain maximum figure. In 1952, it is apparent from looking at these work papers that these other associations had no tax

for the reason that their reserves had not reached the maximum and consequently, the additions to the reserves was the same amount of the net income of the remaining income, remaining after dividends paid to the savings account shareholders.

Q. In other words, they had no taxable income for federal income tax purposes in 1952?

A. It would appear so from my review of these papers.

Q. That was because of the federal treatment of dividends paid on share accounts and because of the federal treatment of the reserves of savings and loan associations?

A. Yes.

Q. Now, on page 2 of Exhibit 210, there is a caption called "Percentage of Net Income After Adding Back Dividends."

Mr. Klein: What exhibit are you referring to?

Mr. Dexter: 210, page 2.

Q. (By Mr. Dexter): Now, is this percentage computed upon the figures under the caption on page 1 of Exhibit 210 entitled, "Net Income Before Dividends and Reserve Additions"?

A. Yes.

Q. Now, turning to Exhibit 211, it is noted that it contains an addition back of the sum of $1,893,000, representing certain (1416) reserves. Would you state why this was done?

A. This was done to arrive at what might be termed a gross asset figure which later is compared to a gross asset figure of the savings and loan associations.

Q. In other words, in both instances, you included the reserves?

A. In both instances, the reserves are not deducted on the asset, from the assets.

Q. I see. And this was done to provide an asset amount for comparison in some other exhibits that you have prepared, Exhibit 213 which is not marked yet?

A. Yes, sir.

* * * * *

(1417) Q. (By Mr. Dexter): I would like to show you an exhibit marked 213 and ask you to identify that, please.

A. Exhibit 213 gives various comparisons relating to tax burden and other information as to the Michigan National Bank and 16 specific savings and loan associations.

Q. Now, is Exhibit 213 computations based upon the other exhibits that you have prepared that have been introduced in evidence? That is Exhibit 208 through 212?

A. That is right.

Q. And those are merely computations and comparisons made off the basic data contained in those other exhibits?

A. That is right.

Mr. Dexter: I would like to offer Exhibit 213 into evidence.

Mr. Klein: Your Honor, 213, may I ask the witness a question or two.

Am I correct in my understanding that in determining the tax burden, as you called it, you include all the taxes that appear on this other exhibit to which I objected in part?

A. That is right.

Mr. Klein: And to the extent that some of those taxes would be eliminated, to that extent the ratios would be different?

(1418) A. That is right.

Mr. Klein: Now, your Honor, I object to this exhibit * * *

The Court: * * *

It is received as being a summary showing the tax burden according to defendants' theory of the case. Whether that is a proper theory, I do not decide, but it is received.

Q. (By Mr. Dexter): Mr. Carlson, included in the computation of taxes on the Michigan National Bank, did you include the total taxes paid as indicated on Exhibit 208-A, which is the taxes (1419) paid by the Michigan National Bank, including $100,000 approximately of taxes paid on deposits by the bank on behalf of its depositors? That should be 208-B rather than A.

A. Included in 208-B?

Q. Yes.

A. I can refer to that in any case, 100 thousand on deposits.

Q. You included that in the taxes on the Michigan National Bank in computing—

A. (Interposing) Yes, the figure on 213 shows intangibles taxes of $168,499.

Q. Which includes the share tax in question plus the tax on deposits?

A. There are two items on 208-B indicated, and one is 100 thousand on the deposit, and the other is 68 thousand on the shares.

Q. Now, in preparing Exhibit 213 you are not able to include any franchise fee on the Federal Savings and Loan Associations, is that true?

A. That is right.

Q. That was because they were obviously not subject to the tax in 1952?

A. What information I have, that is correct.

Q. Now, for comparative purposes did you make a calculation as to what that tax would have been and what your ratio here (1420) on the bottom of Exhibit 213 would have been if the federal associations had been subject to the same franchise tax in 1952 as the state associations?

A. I did make computations for these six associations, and the total tax for 1952 had they been subject to the franchise tax would have approximated slightly over $15,000.

Q. And what would have that done to the ratio of the sixteen specified savings and loan associations column under total assets?

A. Under total assets?

Q. That is the .046 figure. What would that have been changed to if this—

A. (Interposing) The .046 figure would have been changed to .055.

Q. In other words, identically with the ratio of tax burden on the Michigan National Bank using total assets as a measure?

A. Is that a question?

Q. Yes.

A. I won't say identically. As you can see, I only carried it three places.

Q. I mean to the three places it would be identical.

Mr. Klein: Your Honor, just so that there is no—I don't want to interrupt the questioning—I have a continuing objection to this whole line of inquiry. The comparisons as evidence is directly what the Supreme Court (1421) of the United States says may not be done. I again wish to call that to your attention.

* * * * *

The Court: The objection that Mr. Klein has made in connection with the exhibits may stand as to all the questioning along this line, and it will not have to be repeated to each question. It is understood it does apply to all your questioning.

Q. (By Mr. Dexter): I would like to hand you, Mr. Carlson, an exhibit marked 215 and ask you to identify that, please.

A. Exhibit 215 presents figures on certain assets of the Michigan National Bank and 16 specific savings and loan associations.

Q. Was that prepared by you?

A. Yes.

Q. And the source of the data is indicated on the exhibit?

A. That is right. It is taken from the financial balance sheet (1422) of the Michigan National Bank and the other information on schedule 209.

Mr. Dexter: I would like to offer Exhibit 215.

* * * * *

Q. (By Mr. Dexter): Now, from the Exhibit 215 do I understand from footnote 1 that the ratio of first mortgage loans on residential properties is 16.7 for the Michigan National Bank in 1952?

A. Let me see that again.

(1423) (The exhibit was handed to the witness.)

A. That is right, 16.7 per cent of total assets.

* * * * *

(1426) Lansing, Michigan,
Tuesday, October 21, 1958,
9:30 o'clock A.M.

* * * * *

Cross Examination

By Mr. Klein:

Q. Mr. Carlson, how long have you been associated with Peat, Marwick & Mitchell?

A. Approximately three years, slightly over three years.

Q. When did you say you graduated from school?

A. May, 1942.

Q. Mr. James Bartrop still the senior partner in your office?

A. He is the partner in charge in Detroit.

Q. He is the partner in charge of your Detroit office. And up to a short time ago, you were only an employee of that company; you were not a member of the firm; you were not a partner?

A. I became a partner of the firm July 1, 1957.

Q. About a year—

(1427) A. (Interposing): Little over a year ago.

Q. Now, looking at a copy of Exhibit 210, I see on the bottom of that exhibit, page 2, that there is a reference under note 1 that the operating data for state associations is taken from the building and loan division audit papers on file with the Building and Loan Division at the Secretary of State. What did you mean by audit papers?

A. What I mean by audit papers is these are the work papers of the State examiners resulting from their examinations of the records of those specific associations.

Q. You did not get these figures from reports of the associations themselves?

A. That is correct.

Q. It is only from the work papers of what an examiner interpreted those papers to be that you are reporting on Exhibit 210; is that correct?

A. I wouldn't say that.

Q. Well, did you check the original papers as filed by the building and loan associations?

A. You mean the original papers as filed by the savings and loan associations? Not in respect to operating data.

Q. Not in respect to operating data. You only got that from the work papers of the examiners?

* * * * * *

(1428) Q. (By Mr. Klein): You looked at the work papers of the examiners?

A. I looked at the work papers of the examiners, which—

Q. (Interposing): And those papers are not a part of the public records of that office, are they, these work papers?

A. Of—

Q. (Interposing): The Secretary of State's department?

A. I'm not too sure I can answer. I think that is somewhat of a legal question.

Q. You did not check the books and records of the building and loan associations, either, in respect to any of this data, did you?

A. I did not.

Q. And that is in respect to all of the exhibits you testified to?

A. That's right.

Q. That's right, you did not look at the books of the building and loan associations?

A. I did not look at the books of the building and loan associations.

(1429) Q. Now, if you will look at this copy of Exhibit 212, and on the third line there is a heading—this relates to the Michigan National Bank—there is a heading "Interest on Mortgage Loans," the third line, $2,597,-00. That does not include, does it, some $554,000 of annual income in 1952 from FHA Title I modernization loans, does it?

A. Just a moment. I might say this—

Q. (Interposing): Just does it or doesn't it? It is just a simple question.

A. Frankly, I'm not sure.

Q. Well, I will show you another sheet here. Looking at Exhibit 204, which has the operating statement of the Michigan National Bank for the year 1952, is it not true that the interest of $2,597,000 is solely for mortgage loans?

A. That's what the statement says.

Q. And that is the figure you have?

A. That is the figure I used.

Q. And you do not have any portion of the income under installment loans which the testimony shows includes under our Exhibit 104 some $554,000 of income for '52 from FHA Title I loans, do you?

A. This amount only includes that mortgage loan caption; that is correct.

Q. Yes. Now, if you were to add the amount of $554,-000 to the items shown on your Exhibit 212, you would get approximately (1430) $3,0001,000 of interest on mortgage loans and on FHA title I loans, would you not?

* * * * *

(1431) So if you add $554,000 from the FHA Title I interest received by the Michigan National Bank in 1952 to your $2,597,000, that gives you what figure, Mr. Accountant?

A. That approximates—

Q. Just add it up, please. Just put it on here, just add it up.

A. What was the other figure?

Q. $554,000; add it to this other figure (indicating), and that is $3,151,000, isn't it?

A. That is correct.

(1432) Q. And what percentage is $3,151,000 of the gross operating income of the Michigan National Bank in 1952? Would you give us that percentage, Mr. Accountant?

A. I would say approximately 26 per cent.

Q. So instead of a figure of 21.8 per cent, we would have 26 per cent, roughly?

A. If you were to add those together.

Q. If we added those figures together. Now, similarly, looking at Exhibit 215, the second line, you have a figure of first mortgage loans and land contract under the heading of Michigan National Bank of 62 million and something; is that correct?

A. That is correct.

Q. That does not include, does it, an item of 7 million 719 thousand of FHA Title I loans made by the Michigan National Bank or held by the Michigan National Bank on December 31, 1952?

A. May I answer the question another way?

Q. Does it or doesn't it?

A. The way I computed this, I have added this figure from information on Schedule A of the loan discounts,

and I have picked up only real estate loans. That is the way I arrived at the figure.

Q. So it does not include that figure, does it?

A. If it is not in the real estate and loan caption, it does not.

Q. The testimony is it was not under the caption of real estate loans. It was under other installment loans. So if you added (1433) that figure of $7,719,000 to the 62 million—what is that figure—95,000?

A. 75.

Q. Would you see what result we get on that?

A. What is that million figure again?

Q. 7,719,000.

A. Those two figures added together would total $69,-794,000.

Q. And looking down to the ratios, what percentage would the 69,794,000 bear to three hundred seven six ninety-four, the total assets. Would you figure it out, please?

A. Slightly over 22 per cent.

Q. You are sure of that?

A. I still get about the same percentage, little over 22 per cent.

Q. So it would be 22 per cent instead of the 20.2 per cent shown there if we include this figure?

. If you were to add those two figures together.

Q. And then this last figure, remaining assets, would be about 27.6 per cent, wouldn't it?

A. It would be decreased by the same amount as the other was increased.

Q. All right. Now, Mr. Carlson, do you do general corporate accounting practice in your work as an accountant for Peat, Marwick & Mitchell?

A. Yes.

Q. And in that connection, you know what the rules of good (1434) accounting practice require, do you not?

A. In specific situations, yes.

Q. And given a corporation having gross earnings of $4,000,000, roughly, in my case, and a provision or liability for Federal income tax of $2,000,000 or more, in allocating the income to the stockholders' equity account, to-wit: surplus or undivided profit, does good accounting practice require you to first deduct the federal income taxes of $2,000,000 from the $4,000,000 gross income or not?

A. In determining the earnings to the stockholders' equity account, the income taxes would be deducted.

Q. Because it is a liability that must be paid by the corporation before he gets any equity in the earnings; isn't that true?

A. Yes, that's correct.

Q. Now, referring to your Exhibit 213, Mr. Carlson, you show under the Michigan National Bank an item marked "True Net Income," which is $4,096,999; is that correct?

A. That's correct.

Q. And that figure is before deduction or provision for federal income taxes in excess of $2,000,000, is it not?

A. That's right.

* * * * *

(1436) Q. * * * Now, do you have the amount of that provision for federal income tax of the Michigan National Bank for the year 1952?

A. According to one of the exhibits, it was slightly over $2,000,000.

Q. Would you fake the exhibit figure, please?

A. $2,000,000—I believe—$2,082,350.

Q. And would you deduct that from the figure of $4,096,999, please?

(1437) * * * And that gives us a figure of what, sir?

A. $2,014,649.

Q. Using that figure for a moment and comparing it with the tax items you have used in this exhibit, we have objected to them but using your exhibit for the minute, what percentage would you get instead of this figure of 6.9 per cent, about four lines from the bottom under the Michigan National Bank?

A. It is a long computation but approximately it is slightly over 13 per cent.

Q. Wouldn't it be double that or 13.8 per cent?

A. Just about, yes.

Q. Well, that is not 13. It is closer to 14 per cent, isn't it?

A. Yes, it is approximately double.

Q. A little more than double, isn't it?

A. 13.7 or 13.8.

Q. Well, 13.8—is that the figure?

A. Approximately.

Q. Let us put that down in pencil, 13.8 per cent. Now, Mr. Carlson, in determining the net income of a corporation or a corporate association organized under corporation laws, after deducting any provision for federal income tax, whatever it may be, you arrive at a figure of net income, don't you, available for allocation to the stockholders' account, equity account, isn't that correct, of undivided profits or surplus?

(1438) A. Well, speaking of corporations with capital stock, that is true.

Q. And that is what good accounting practice requires?

A. Yes, for a corporation with capital stock.

Q. And after that, if there is any and that is the income, is it not, the net income after taxes of that corporation for the year under those facts as I have stated them?

A. That figure would be the net income after federal income taxes.

Q. And that is the amount available either for allocation to the surplus or undivided profits account or for distribution to stockholders, isn't that correct?

A. Yes.

Q. In fact, doesn't good accounting practice generally require that the amount be allocated to the undivided profits or surplus account before you charge any dividend against those earnings?

A. That is the case of a commercial corporate type of corporation.

Q. That is the general practice in the case of building and loan associations, isn't it?

A. I cannot answer that. I cannot say.

* * * * *

(1440) Q. * * * Looking at Exhibit 29, which is the annual report of the Citizens Savings & Loan as filed with the Home Loan Board in the form that bears the Home Loan Board label, you see, do you not, on the fourth page under "Statement of Operations," under IX the item "Net Income before Federal Income Tax," don't you?

A. There is an item there, yes.

Q. And there is a figure there?

A. There is a figure on there.

Q. And then there is another place under line 40 marked "Less Federal Income Tax," isn't that correct?

A. There is a line there.

Q. And X is net income for the year after federal tax. There is a line, isn't there, for that?

(1441) A. There is.

Q. And there is a figure there, is that correct?

A. There is a figure.

Q. In this case there happens to have been no federal income tax because there is no deduction there?

A. There is a blank space on that line.

Q. Now, taking the next page, isn't there a heading called "Reconcilement of Undivided Profits or Surplus Account," Exhibit C?

A. There is such an exhibit.

Q. And on line 2 there is an item of net income for the year, which is item 10, of the exhibit preceding the operating statement, Exhibit B. Isn't that correct?

A. That is so marked.

Q. And then there is a 3-C, a reserve, isn't there, a federal insurance reserve, isn't there?

A. That is under a caption, under a heading.

Q. Yes, transfers to reserves, and then the balance is to dividends, isn't that correct?

A. It doesn't say balance.

Q. To dividends?

A. To dividends.

Q. The two items balance out, don't they, the reserve plus the two dividends?

A. Equals—

(1442) Q. (Interposing): Equals the operating income after taxes shown in the prior line.

A. It equals line 2 of the schedule.

Q. And that line 2 is the net income after Federal income taxes, isn't it?

A. It so refers back to the other schedule.

Q. And that figure, then, on the top of the line is to be deducted if there is anything remaining from the undivided profits and surplus at the beginning of the year, isn't it? There is a line there for it, isn't there?

A. Deducted or added.

Q. Deducted or added, whichever it may be, and then you get what the undivided profits or surplus of your savings and loan association would be at the end of 1952.

A. Not exactly, because there are some other adjustments farther down.

Q. All right, you get it up to that point, don't you?

A. Up to that point you get it.

Q. And the other adjustments are some other dividends paid, which are deducted or added. This is dividends received, isn't it?

A. That is an adjustment in the undivided profits account.

Q. So in the practice under this form, the first line provides for the undivided profits or surplus at the beginning of the year, does it not?

A. It is so indicated.

(1443) Q. And from this form there is provision for deduction of dividends from the net earnings after federal income taxes before determining what the surplus in undivided profits would be for this building and loan association for the year 1952, at the end of the year, wouldn't it?

A. There are several items.

Q. Yes, but that is one of them?

A. In these various lines you have stated.

Q. Yes. And that is in accordance with good corporate accounting practice, is it not?

A. I cannot answer that question.

Q. I am talking about general corporate accounting practice.

* * * * *

(1445) A. The way that question is stated relating to that particular exhibit in that reference—

Q. (By Mr. Klein, interposing): I didn't ask you in reference to the exhibit.

A. I have already answered the particular question in that category.

Q. Would you listen to the question again, sir. Would good accounting practice for corporate accounting, general corporate accounting, require the following steps in allocating net income after taxes, after federal taxes, in showing the distribution to the undivided profits and surplus account:

One, the deduction of federal taxes, income taxes, from the net income before taxes. That is correct, isn't it? That is one step?

A. A deduction, yes.

Q. So that gets net income after Federal income taxes; is that correct?

A. For general commercial corporate accounting.

Q. Yes. And then that item is then transferred to the undivided profits or surplus account?

A. That net figure would go into the surplus, yes.

Q. Good accounting practice requires that?

A. In the case of a commercial corporation.

Q. And then if dividends are declared, they are deducted from the (1446) undivided profits and surplus account?

A. In the case of a commercial corporation.

Q. Yes. In other words, the net income of that corporation is the item after federal income taxes, isn't it?

A. The net income of the corporation is after the federal income taxes.

Q. And that procedure was what was followed, was it not, on Exhibit 49, the annual report form prepared by the Budget Bureau of the United States, Home Loan Board and cooperating state department, was it not?

A. The form so indicates, what you have read.

Q. And that procedure was followed in the accounting practice, was it not?

A. On the statement, X does show a caption "Net Income for the Year after Federal Income Taxes."

* * * * *

(1447) Q. * * * That is what is shown under line 10 as the net income of that corporation for the year after federal income taxes, is it not?

A. The line says "Net income for the year after federal income taxes."

Q. And then the next is a reconcilement of the undivided surplus account, and the first line is the balance carried over from the prior year, isn't it?

A. The line so indicates.

Q. And then there is added to that the net income of the corporation for the year 1952?

A. That line so indicates.

Q. And then there is deducted from that, among other items, the dividends paid during the year 1952?

A. There is a line for dividends.

Q. Yes. And then you get the reconcilement after other deductions?

A. Yes. There are further deductions on down the line.

Q. Yes. Now, if you were to look under the heading on 216 of 16 savings and loan associations, you have de-

ducted, have you not, an item—213, I beg your pardon. I misspoke myself. Referring to 16 savings and loan associations, and (1448) the seventh line down says "Net income"?

A. "True net income."

Q. Now, that amount is $1,375,000, isn't it?

A. That's correct.

Q. But you have deducted from the income of the associations, the dividends of $3,190,000 paid during the year of 1952 to shareholders of those associations, have you not?

A. That amount deducted represents the dividends of the savings share accounts.

Q. Which was paid in 1952?

A. I assume they were, from the records I examined.

Q. So if you add that back, we have the income of the 16 associations before distribution of dividends to shareholders, do you not?

A. We have the income before the dividend.

Q. And that would be $4,566,174, would it not?

A. Those two figures added together would be that figure.

* * * * *

Q. * * * Now, using that figure in determining your so-called comparison of tax burden to income, you would get instead of a figure of 10.2 per cent, one of 3.1 per cent, isn't that correct, sir?

A. That is right.

Q. So, to go back, if in the column under Michigan National Bank (1449) you show the net income after federal income taxes which would be $2,044,649, or thereabouts, and you have testified the ratio of tax burden to income would be 13.8 per cent, have you not—that is correct, isn't it?

A. The tax burden as indicated here?

Q. Yes.

A. Oh, including the real and other taxes.

Q. And noting the adjustment, we have indicated in the next column under the savings and loan associations, that is adding back dividends paid during the year, you would have a figure of 3.1 per cent, would you not?

A. If that were done, that would be the figure.

Q. So you would have a tax burden on the Michigan National Bank of 13.8 per cent and a tax burden on the associations of 3.1 per cent, isn't that correct?

A. Assuming the—

Q. (Interposing) Assuming those facts.

A. The conditions that you set out, that would be the case.

Q. All right. Now, let us go one step further to correct at least—well, again on Exhibit 213 in the ninth line down, interest on mortgage loans and so forth, since you have testified that didn't include FHA Title I, that 21.8 per cent becomes roughly 26 per cent, does it not?

A. Adding those Title I's, that would be approximately it.

Q. Now, looking at the next column on the savings and loan (1450) associations, on the heading "True net income of total assets to total assets and to gross income," if we make the adjustment of adding back the dividends paid so as to get the earnings after taxes but before dividends to shareholders, the line "Total Assets,"—that ratio would become instead of .9 per cent, it would become 3.0 per cent, would it not?

A. Well—

Q. Well, make your computation.

A. Actually, a computation came out to 2.9 per cent, approximating 3.

Q. And the next figure, comparison of net income to gross income, would be about 70 per cent, wouldn't it, instead of 20.4 per cent?

A. I get approximately 68 per cent.

Q. And these other ratios like ratio of franchise and intangibles tax to true income, that would be changed too, wouldn't it?

A. Assuming the adjustments that you talk about.

Q. How would that be changed? Could you figure that out, sir?

A. You are talking about now the 16 specific savings and loan associations?

Q. Yes.

A. And if you add back to true net income the dividends on the savings shares.

Q. That is right.

A. The ratio of the franchise and intangibles taxes to such an (1451) adjusted amount would be 1.6.

Q. It would be 1.6?

* * * * *

A. That is the ratio to true net income of the franchise and intangibles taxes. That would be 1.6 per cent.

* * * * *

Q. * * What is this 5.2?

A. 5.2 is the ratio of franchise and intangibles taxes to the true net income.

Q. Adding back those figures, though, what figure would you have?

A. Adding back the dividend to that figure?

Q. Yes:

A. You get 1.6.

Q. You would have 1.6 instead of the 5.2, which is computed after deducting—

A. (Interposing) If such an adjustment were made.

Q. Now, if you adjusted the Michigan National Bank income to provide for the deduction of federal income taxes, looking at a comparable figure of the ratio of franchise and intangibles tax, that would just be about double, wouldn't it?

A. Approximately.

(1452) Q. That would be about 8.2 per cent as compared with 1.6 per cent, using those adjustments, isn't that correct, using those two adjusiments?

A. If you deduct the income taxes from true net income, you arrive at an approximate $2,000,000 figure, and, of course, the ratio of the franchise and intangibles taxes would be higher if such an adjustment is made.

Q. As compared with 1.6 per cent, if we add back the distribution of dividends to shareholders in the year 1952, isn't that correct?

A. If such an adjustment is made, that would be the ratio.

* * * * *

Q. * * * Who directed you to prepare this table in the way it was prepared?

* * * * *

A. No one told me to prepare it specifically in this form. The general set-up was done by myself.

Q. By whom were you employed in this case?

A. I believe we are employed by the Michigan Savings and Loan.

Q. Michigan Savings and Loan, and who from the Savings and Loan employed you?

* * * * * * *

(1453) A. We were engaged by the—I would say I suppose the acting secretary.

Q. Of the Michigan Savings and Loan Association?

A. Yes.

* * * * *

(1454) *Re-direct Examination*

By Mr. Dexter:

Q. Now, referring to Exhibit 210, Mr. Carlson, why did you use the examination or audit reports of savings and loan associations rather than the annual reports of the savings and loan associations to make your computations there?

A. As far as the state associations are concerned?

Q. Yes.

(1455) A. The December 31 statement of the state chartered associations did not contain operating information, consequently we had to get that from other sources, which was obtained from the work papers of the state examiners.

Q. In other words, the state examiners would prepare their work papers on multiples of six-month periods?

A. That is correct.

Q. And you were able to go back from those examination reports and get the breakdown of gross operating income for the year 1952 from that source?

A. That is correct.

Q. And it was not broken down in that particular way on the annual reports?

A. That information was not on the annual reports.

Q. And that is why you used the audit reports.

* * * * *

(1462) Q. (By Mr. Dexter): Mr. Carlson, I understand you do not consider yourself qualified in any way as an expert on savings and loan accounting?

A. Yes, because of the fact that my experience is limited. It is a relatively new field.

Q. Your testimony relative to accounting practices on cross examination of Mr. Klein is limited to the general commercial corporation and not applicable to savings and loan associations?

* * * * *

Q. (By Mr. Dexter): Mr. Carlson, did you mean to testify in your testimony in regard to what is good accounting practices in savings and loan accounting?

(1463) A. I didn't testify to what was good accounting practice in savings and loan accounting.

Q. So that when you referred in your testimony to general commercial corporate practice, you were not making reference to savings and loan associations?

A. No. I was referring to commercial corporation practice.

Q. And you were not trying to classify savings and loan associations as being in that class?

A. No.

Q. Now, in preparing Exhibit 213, you included, did you not, the federal income tax not only for the Michigan National Bank, but for all savings and loan associations?

A. Included?

Q. Included it in your true net income before—

A. (Interposing) It is before income taxes.

Q. It is before income taxes for both the Michigan National Bank and the 16 savings and loan associations?

A. That is right.

* * * * *

(1464) Q. * * * Mr. Carlson, I think you answered yesterday that you had prepared some income tax returns, isolated instances, for savings and loan associations?

A. That is right.

Q. And did you testify that in preparing those returns you were familiar with the way the federal income tax was computed for those returns?

A. That is right.

Q. And did you not testify that in computing your federal income tax in determining net taxable income you deducted the dividends on savings shares the same as you would interest (1465) paid by a bank, for example, on savings deposits?

A. They are treated as ordinary deductions.

Q. In other words, they are treated as debt capital, the savings share account, for federal income tax purposes?

A. They are deductible in arriving at federal taxable income.

Q. And that would be consistent with including them within the concept of true net income for Exhibit 213?

A. Under the true income defined on this schedule, it assumes the same type of deduction, of course.

Q. In other words, you are including all interest income in the bank's income, are you not, on Exhibit 213,

the gross income of the bank, including all its interest *income?*

A. I have taken the bank's figure right off their statement.

* * * * *

(1465) *Re-cross Examination*

By Mr. Klein:

Q. Mr. Carlson, do you have that federal tax statute here with you relating to the building and loan associations?

A. No, sir.

Q. And isn't it true that the statute provides that you may deduct distributions to shareholders in building and loan associations from net income as a means of lightening the impact of federal income taxes—

* * * * *

A. As you stated in those exact words I cannot answer that question.

Q. (By Mr. Klein): Well, can you give us any answer? Have you read the statute? Just a second. Have you read the statute that we are talking about?

A. Not recently.

Q. Can you give us the gist of the statute? Don't you first determine net income of the savings and loan associations under the form?

A. Under the federal tax?

Q. Under the federal tax form for building and loan associations. I am talking about the income tax form.

(1467) A. You are talking about the federal corporation return?

Q. Yes. You first determine net income, don't you, of the association?

A. The net income for a savings and loan—

Q. Go ahead.

A. —association, where they do not pay taxes is zero.

Q. The net income is on the form: isn't there a line on the form "net income"?

A. There is a line for net income, that is correct.

Q. Yes, sir, and then, there is a credit for distribution to shareholders, isn't there?

A. No.

Q. Do you have a form here?

A. No, I don't.

Q. You don't. How about the distribution of surplus up to twelve per cent; that is permitted, isn't it?

A. That isn't the terminology used.

Q. What is the terminology?

A. Generally speaking, you are deducting, you are making this reserve addition as they call it as a bad, in a sense, a bad debt deduction is what it is.

Q. It is from the net income and then you deduct it, don't you?

A. It isn't deducted from the net income.

Q. It is permitted by the special tax law giving special treatment for tax purposes, federal income tax purposes, to federal savings (1468) and loan associations, doesn't it?

Mr. Dexter: It includes—

Mr. Klein: (interposing) Would you please let me ask the question?

Mr. Dexter: You are telling him, Mr. Klein—if you are going to tell him, it includes all of the savings and loan associations.

Q. (By Mr. Klein): With that amendment, what is the answer?

A. I will answer the question this way—

Q. You answer the question the way it is asked.

A. I can't answer the way you asked it.

Q. Can you give me the statute, the gist of the statute?

A. I can say this: The net income on a savings and loan association—for savings and loan associations, on the federal income tax return where they have not received their twelve per cent is zero.

Q. It is because they are allowed credit, are they not?

A. No. I wouldn't call it a credit.

Q. They are allowed a deduction to use your term?

A. In arriving at the net income—

Q. For federal income tax purpose only.

A. They are allowed that deduction.

Q. For federal income tax purposes only?

A. Well, I can't say only; I say for federal income tax purposes.

Q. And they are allowed to deduct distributions to shareholders (1469) because the shareholders have to pay an income tax on their dividends, isn't that right?

* * * * *

Q. * * * You don't have any form here?

A. No.

Q. How recently have you made out these tax forms?

A. We made them out—

Q. I said you.

A. I made some out last January and February.

* * * * *

(1470) *Re-direct Examination*

By Mr. Dexter:

Q. Now, referring back to Exhibit 213, Mr. Carlson, there you had included all of the taxes, had you not, that were stated thereon in your various comparatives. Now, have you prepared the same comparisons in terms of the franchise tax on savings and loan associations and the intangibles tax on banks?

A. That is already on there, the total of the two. Those ratios are already on schedule 213.

Q. But what additional comparison did you make?

A. You mean what have I done?

Q. Yes.

A. Under this ratio of state and local taxes, as you see, the total tax burden in column 2 and under the 16 is 141 thousand. For another type of ratio presentation we have taken out the real property tax, the unemployment tax and the examination fee.

Q. And what would that change that 141 thousand.

(1471) A. Going across the three columns, I can give you new totals.

* * * * *

A. You see the 16 specific savings and loan associations, your Honor, and down at the bottom there is a figure of 141 thousand?

* * * * *

A. Now, from these totals on the bottom of this schedule I have now deducted the real property taxes, the state unemployment taxes and the examination fees.

Q. (By Mr. Dexter): And then what would that leave in those total figures?

A. Replacing the $141,000 total would be an amount of $76,107; replacing the $98,000 figure would be an

amount of \$53,072; and replacing the figure \$42,000 would be an amount of \$23,035.

Q. And what do these new figures represent?

A. Well, these new figures then represent actually the total of franchise taxes, intangibles tax and personal property tax, and in one instance there the tax on increase in authorized capital.

Q. And what did the total of the Michigan National Bank taxes change to?

A. The Michigan National Bank total now would only include the intangibles tax, since we have removed the unemployment and the real taxes, which leave a total there of \$168,499.

(1472) Q. And that total still includes the intangibles tax both on the share accounts—

A. (Interposing) Well, it is the same as it was previously.

Q. And the previous intangibles tax included, did it not—that is, the figure of \$168,499—\$100,318.24 in intangibles taxes imposed on bank depositors?

A. That is on one of these schedules.

(1473) Q. That would be in schedule Exhibit 208-A, B?

A. That is as indicated on 208-B.

Q. And that on 208-B indicates that that amount on deposits was what figure?

A. One hundred thousand three hundred eighteen dollars.

Q. Twenty-four cents.

A. Twenty-four cents.

Q. So that amount of the 168,499 carried on Exhibit 213 was the tax on bank deposits?

A. And shares.

Q. The amount—

A. (Interposing) One hundred thousand is, that is right.

Q. All right, now, based on these new tax adjustments, did you work out the ratios indicated on Exhibit 213?

A. Yes, and here, again, I will start with the Michigan National Bank column.

Q. All right. What was the 6.9?

A. The 6.9 is now 4.1, as indicated below. In other words, the Michigan National column would be the same in both instances, since we had in these tax totals the same tax, and the .091 will be .055 now.

Q. And what other adjustments—

A. (Interposing): And under the sixteen specific savings and loan associations, the 10.2 figure would now be 5.5.

Q. What would the 3.1 figure be?

(1474) A. The 3.1 figure would be 1.7, and the .089 figure would be .048.

Q. And what would the 5.2 figure be?

A. Those aren't changed.

Q. Those are not changed, OK. Now, turning to the Penn State Savings and Loan, what would the adjustment there be?

A. The new figures would be instead of the 14.1, we would have 7.6.

Q. Instead of 3.6?

A. We would have 2.0.

Q. And instead of the—

A. (Interposing): .014, we would have .057. • • • Then of the six federal, the ratios would be changed; 6.3 would be 3.4; the 2.3 would be 1.2; the .067 would be .036.

Mr. Dexter: Now, I think the Court understands that these adjustments that Mr. Carlson has testified to are

just showing additional comparisons other than those shown on Exhibit 213.

(1475) The Court: He used the same figures for true net income as previously used above. They do not include Mr. Klein's re-figuring of that.

Mr. Dexter: That is right, just showing additional adjustments, taking into consideration different taxes.

Re-cross Examination

By Mr. Klein:

Q. Mr. Carlson, if you deduct the federal income tax from the Michigan National Bank and use that method of approach for the taxes you are considering, what is the figure you get?

A. If such an adjustment is made, the figure would be exactly the same as we had in the other instance, would be roughly 8.2, in the first instance.

Q. It would be 8.2 instead of 6.9 that you have got there?

A. I have given you a new figure on that now.

Q. Instead of 4.1, it would be 8.2?

A. That is right, approximately.

Q. I get you. And if you consider the savings and loan income before distribution of dividends to shareholders, what would your figure be? 1.7?

A. That is right.

Q. In other words, it would be 8.2 to 1.7?

A. Using those adjustments.

Q. Yes. And how would you adjust the next line, or wouldn't (1476) they be—

A. (Interposing): The one where the .089 is? That wouldn't be.

Q. How about the next one, true ratio—that is unimportant.

A. We have done that.

* * * * *

SPLAN, THOMAS, was thereupon recalled as a witness herein, and, having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Klein:

Q. Mr. Splan, I think you testified that you prepared Exhibits 200, 200-A, 200-B, 200-C. Is that correct?

A. That is right.

Q. And those relate to data as to the mortgages of the sixteen savings and loan associations involved in this case; is that correct, sir?

A. Yes, sir.

Q. What papers did you examine in connection with the preparation, let's say, of Exhibit 200 to start with? Just look at 200 first.

(1477) A. This exhibit here, sir, comes from 200-A and 200-C.

Q. What papers did you look at in order to prepare those exhibits?

A. The original papers at the savings and loan associations.

Q. What original papers?

A. It would be the ledger card, accounts receivable cards It would be the loan register.

Q. They each have a loan register?

A. Yes, sir.

Q. Showing what?

A. Showing the name of the mortgagor, the account number assigned to him, the—

Q. (Interposing): Term of the mortgage?

A. In some instances, yes.

Q. What are the other instances? How did you figure the term of the mortgage?

A. It was always on the accounts receivable card.

Q. And the rate of interest?

A. Yes, sir.

Q. The balance, if any, owing?

A. Yes, sir.

Q. And each association had similar records?

A. Yes.

Q. Did you examine the original mortgage?

A. In some instances.

(1477½) Q. Did you examine the original mortgage notes?

A. Only occasionally, sir, not every one, no, sir.

(1478) Q. Who arranged for you to go to see the building and loan associations, to get this information?

A. Counsel, Mr. Dexter.

Q. And who else? Did you talk to Mr. Cummins about it?

A. No, sir. My work was always through Mr. Dexter.

Q. All through Mr. Dexter?

A. Yes, sir.

Q. And the building and loan people permitted you and had prepared for you these exhibits to see, did they?

A. Yes, sir.

Q. Did they themselves prepare tables for you?

A. No.

Q. You prepared them all yourselves?

A. Yes, sir.

Q. They had no records that they prepared in advance?

A. No, sir.

Q. And do you have your note papers from which you prepared these exhibits?

A. Yes, sir.

Q. Where are they?

A. They are on file over here at the office.

Q. Could you go get them and bring them over here, sir? I would like to have them examined.

A. Yes, we could.

(1479) Q. Would you do that? I asked Mr. Van Coevering yesterday if you would bring them over here to court. He may have forgotten them.

A. Yes.

Q. How long would it take you to get them, sir?

A. Half an hour.

Q. Half an hour? It is that far away?

A. Yes. I have got to walk over there and I can't walk too fast.

Q. And the other exhibits, those exhibits in the 200 series are the ones that are prepared from the records of the savings and loan associations?

A. Yes, sir.

Q. How long did it take you to prepare that work?

A. Oh, a couple of weeks, I guess.

Q. A couple of weeks? You went to each of the offices?

A. With the exception that was mentioned yesterday.

Q. And referring to Exhibit 200, 200-A, 200-B and 200-C, when were these exhibits completed?

A. Well, the typing of them, frankly, I don't know. I think it was just prepared recently.

Q. When did you do the work?
A. In September, sir.
Q. In September?
A. Yes.
Q. Had you been asked to do it in August or July?
(1480) A. I was asked the last week in August or the middle of the week in August. I don't recall. Some time in August. I had other work which I had to do first.
Q. And the savings and loan associations freely permitted you to examine these records?
A. Yes, sir.
Q. And from them, you prepared these exhibits?
A. Yes, sir.
Q. Well, I would appreciate if you could bring those papers from which your notes were made and from which these exhibits were in turn prepared to court because I would like to have them marked.
A. OK, sir.

• • • • •

(1501) The Court: * * * Here is the rule of law that I have adhered to: These summaries (Exhibits 200, 200-A, 200-B, 200-C) are admissible in evidence only if the original records are in evidence, provided their production in evidence is asked by the other side.

They have asked it. So, one of three things happens: Either you produce these records, including the mortgages and the appraisals by subpoena in evidence—the practical way that we are going to hold court will be worked out later—or you make them available without subpoena, or the evidence is stricken. One of the three.

Mr. Klein: Mr. Dexter had in mind—and I just overheard the conversation—of producing only such mortgages as fall less than ten years or with appraisals un-

der the sixty per cent ratio and we want to see all of the mortgages for '52.

We would be perfectly willing to take a sampling of a month across the board of each association and stand on that, whatever month is picked out and say that would be (1502) a fair sample of '52. It might save a lot of work for everyone. We are perfectly willing to limit it to a month, any month that is picked out and say that is a fair average and you multiply it by twelve or something and you come out about the same way and we will furnish the manpower and we will do it quickly. We will furnish as much manpower as needed and if the State wishes to have a man there, we have no objection. They can see anything in writing.

* * * * *

(1505) Lansing, Michigan, Tuesday, October 21, 1958.
1:30 o'clock P.M.

* * * * *

SPLAN, THOMAS, thereupon resumed the stand as a witness herein, and, having been previously duly sworn, testified further as follows:

Re-direct Examination

By Mr. Dexter:

Q. I would like to show you Exhibit 208-A, Mr. Splan, and refer you to the column under the heading use tax. Now, in reference to that column, what use taxes did you include there?

A. The taxes that were paid directly by this association to the State of Michigan.

Q. In other words, those associations indicating that they had use tax payments were those that were licensed under the Michigan use tax statute?

(1506) A. That is correct.

Q. Now, were you able to find any additional use tax for the other associations.

A. No, sir. If they buy out of state, they pay the use tax regularly to the fellow who is voluntarily licensed with the State of Michigan, and they expense the material that they buy, and naturally it becomes a large lot of work to dig it out. So for that reason we didn't do it.

Q. It is more or less included in the cost of tangible personal property?

A. Yes.

Q. Therefore, there wasn't any way you could break it out in 1952?

A. That is right.

* * * * *

(1507) McNAUGHTON, ALAN, was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

Q. And your address?

A. My address is Chicago, Illinois.

Q. Your occupation?

A. I am a certified public accountant. I am a partner of Peat, Marwick, Mitchell & Company.

Q. How long have you been a certified public accountant?

A. I have been a certified accountant for seventeen years.

Q. And how long have you been a partner in the firm of Peat, Marwick & Mitchell?

A. I have been a partner since September 1, 1956. Prior to that I had my own firm. It was merged into that.

Q. Would you state generally your educational background?

A. Yes. I am a graduate of Northwestern University in Evanston, Illinois.

I have been associated in the savings and loan business for about twenty-five years; prior to that, in the banking business.

I have done some teaching, and so forth.

Q. Now, what do you mean you have been associated in the savings (1508) and loan business for about twenty-five years?

A. Well, I started in 1934 as federal examiner. I worked for the Federal Home Loan Bank Board. Subsequent to that, I went into public accounting and then organized my own firm.

Q. In the public accounting field, did you do public accounting for savings and loan associations?

A. That's right.

Q. And was that a great number of associations?

A. Well, over a period of years, I have done lots of them. Currently I think I do something like 600 of them in the country.

I happen to head up the savings and loan department of our firm, and over the years I have worked almost exclusively with savings and loans.

Q. In other words, basically that has been your specialty in your field of accounting?

A. Yes; and up until I merged my firm with Peat, Marwick, I worked in Illinois and Wisconsin primarily, but now it is all over.

Q. Have you done any testifying before Congressional committees in regard to tax problems of savings and loan associations?

A. Yes, I did. When Congress was proposing the legislation taxing the savings and loan associations, which came in in 1951, under the 1939 Revenue Code.

Q. That is taxation of such associations for federal income tax purposes?

(1509) A. That is right.

Q. And have you in your specialized work in the savings and loan associations field examined books and records and accounts of these various savings and loan associations?

A. I have a considerable number of them, but nowadays my work is generally administrative, but I think I could still do one if I had to.

Q. And you are familiar with the way that they keep their books and records of accounts generally?

A. Yes, sir.

Q. You are familiar with the way the savings and loan associations in the State of Michigan keep their books and records?

A. Yes. We have some clients in this state and I have a general observation, a general knowledge of the way they do it.

Q. And that would include the federal savings and loan associations in this state?

A. Yes.

Q. And the state associations?

A. Yes.

Q. Do you have any other particular qualifications that you would like to state in the savings and loan field which you have done?

A. Well, I think you have covered the situation admirably.

Q. You have examined reports from states of condition of the Michigan Loan association?

(1510) A. Yes.

Q. And have you prepared federal income tax returns for savings and loan associations?

A. Yes, not in the State of Michigan, but I have prepared federal income taxes.

Q. For savings and loan associations?

A. Yes.

Q. And do you know the current practice or the practice in 1952 in regard to those returns?

A. Largely so. It is the same as it was then. I don't attempt to keep up to date with all of the code numbers and that sort of thing, but in general I know the principles involved.

Q. That is the principles involved in the federal taxation for income tax purposes of savings and loan associations?

A. Yes.

* * * * *

(1512) Mr. Klein: * * * Furthermore, I don't think this witness has testified that he has had any experience in determining taxes under our R.S.-5219. Have you, sir?

A. I have not.

Mr. Klein: Have you had any experience under the Michigan Intangibles Tax law that is involved in this case?

A. No, sir.

Mr. Klein: So you have no experience in this revised statute of the federal government, 5219?

A. That is correct.

* * * * *

(1521) Q. (By Mr. Dexter): * * * Based upon on your knowledge of the accepted accounting principles and your examination of the exhibits offered in evidence by Mr. Carlson, including this Exhibit 213, what is, in your opinion, the best method of comparing the tax burden on a share of bank stock with the (1522) tax burden on a share of a savings and loan association in relation to value?

* * * * *

(1525) The Court: The objection is sustained on both grounds.

If you wish to make a separate record, you know how, but as far as I am concerned, on the general record the objection is sustained.

Mr. Dexter: I would like to make a separate record.

* * * * *

(1527) Q. (By Mr. Dexter): Will you answer the question I posed you, Mr. McNaughton?

A. First, Mr. Dexter, I would like to have the Exhibit 213, the one I have is perhaps not correct, after all of the changes.

The Court: The exhibit was not changed.

Mr. Dexter: No.

The Court: There were some modifications made by testimony.

Q. (By Mr. Dexter): Forget all of the penciled notations, Mr. McNaughton.

A. Well, it seems to me that your question now, if we can get back to that, the question is the effect of the burden on the savings and loan, as compared with the

bank, and it seems to me that in the case we have here and it shows in Exhibit 213 that there is no material difference in the effect upon their operations.

Q. What would you use as a comparison of the tax burden between the burden imposed upon shares of National Bank stock or capital versus that imposed upon the savings share accounts?

The Court: Mr. Dexter, if I may interrupt you at this point.

I sustained the objection on both grounds, and one (1528) of them was that as to this point at least you haven't qualified this witness to testify with reference to any matters under Sections 5219 or under the Michigan Intangibles Tax Law.

I said you may make a special record and you may, but I still feel that you haven't, even if I should be convinced that you were right later on with respect to this measuring of the burden business, I still would feel that this witness was not qualified on the showing up to this time. I am not passing on his credentials except as far as the questions and answers up to this point are concerned; they show that he is an expert in the field of accounting of building and loan associations—period.

Mr. Dexter: Your Honor, maybe there is a little cross thought here. We are not trying to make a legal comparison.

Now, we are asking this person—

The Court (interposing): Well, I just wanted to put you on warning that if later on you are able to change my mind somewhat on this second question as to whether the whole subject matter is open in view of the language of this statute, I still would feel that you had not qualified this particular witness in the matters that you are concerned with in having him testify.

Q. (By Mr. Dexter): Mr. McNaughton, you stated that you are (1529) familiar with the federal income tax law in its treatment of both national banks and savings and loan associations?

A. That is correct, and I think I know the effect of any tax, including the state tax, on the income of a bank or savings and loan or any kind—

Q. Are you familiar with Exhibit 213 which you have before you?

A. Somewhat. I looked it over and heard Mr. Carlson talk about it. Incidentally, I think that the proper ratio, if we are going to get a comparison, is the ratio of the franchise and intangible taxes to what Mr. Carlson calls true net income.

Q. Are you familiar at all with the Michigan Intangibles Tax statute?

A. Well, not the statute, no.

Q. I mean do you know how it applies to savings and loan associations?

A. Yes.

Q. Do you know how it subjects to tax the national banking associations?

A. I believe so. I could tell you what I think.

Q. Well, what do you believe it to be?

A. Well, I think that the tax on the savings and loans is based on the savings share accounts outstanding, one quarter of a mill or something. I have forgotten the rate. The banks are taxed, I believe, on their capital stock outstanding.

(1530) Q. Do you know at least the arithmetic of those taxes shown on Exhibit 213?

Mr. Klein: Does he know the rate against the bank shares, may I ask him that? I would like to get this—I

want to make an objection and that is why I want to know.

Mr. Dexter: This is on a separate record, Mr. Klein.

The Court: But still you are going to ask me to consider it and I think that counsel has the right to inquire as to the classifications of any expert witness.

Mr. Klein: Do you know the rate under the Michigan law and the national banks—

A. (Interposing): I don't know the rate on either of them.

* * * * *

A. That is right.

Mr. Klein: I object even on a separate record.

The Court: Well, I have told counsel that he has not qualified the witness and I feel the same way, that as far as I am concerned, his testimony will not be considered.

Mr. Dexter: I would suggest, your Honor, that we familiarize the witness with the Michigan statutes which are not any great burden to learn. He has the economic effects of them before him and I will call him for questions for a separate record at a later date.

* * * * *

(1531) The Court: I don't like to invite you to make a separate record and then change my mind, but I might better change my mind than perpetuate an error.

It seems to me that you have a witness here that says he is not at all certain of two things. One is the rate and the second is the base upon which that rate is applied, and then you ask him to tell us as an expert where the burden is. Can such testimony be competent in a court of law? It doesn't seem to me it can. I think I will sustain the objection at this point.

(1532) Q. (By Mr. Dexter): I would like to ask you, Mr. McNaughton, this hypothetical question. * * * And this is still, your Honor, on the separate record.

Q. If the tax burden on national bank shares, capital account, is measured at five and a half mills and the bank deposits are subject to a quarter of a mill tax, and if the savings and loan associations pay a quarter of a mill tax measured by their share accounts and their reserves, and also the saving share accounts are subject to a one-quarter of a mill intangibles tax comparable to the bank deposits taxed, in your opinion does this constiute a proper tax comparative?

Mr. Klein: I object to the question. This witness has no basis. He is not qualified to answer the question. No showing as to his qualifications whatsoever. In fact, his qualifications on this subject, not to the field of accounting matters.

The Court: Sustained.

Q. (By Mr. Dexter): Are yor familiar with the capital structure of national banks as compared to the capital structure of savings and loan associations?

A. Yes, sir.

Mr. Klein: You are trying to qualify this man, is that it?

What has been your experience with national bank (1533) accounting, sir, your own experience?

A. My own experience?

The Court: Let's proceed in an orderly manner. Let's have Mr. Dexter ask his questions, and before any expert testimony is asked, you may inquire as to his qualifications.

Q. (By Mr. Dexter): Now, Mr. McNaughton, in the accounting of the savings and loan associations, are different principles involved than in the accounting for commercial banks?

A. Yes, there are.

Q. And are you familiar with those accounting principles?

A. I believe so.

Q. Would you state what some of the differences are?

A. Well, a bank has capital stock—its capital or net worth set-up is much like any commercial company. It is composed of stock issued which cannot be redeemed except upon shareholders changing the by-laws and that sort of thing, and the surplus and reserves are created from the profits of the bank.

Savings and loan associations, they don't have the same kind of capital. They have savings share accounts which are open. Anyone can go in and buy them at any time. They don't stop them. And of course, there, again, they try to produce profits which go into their surplus and reserves the same as the banks, but there is a different distinction between the capital stock of any kind of a bank, of a national bank or (1534) state bank, as compared with a savings and loan association.

Mr. Klein: For accounting purposes you are only talking? You are only talking about accounting?

A. I am talking as an accountant.

Mr. Klein: And accounting principles. That was the question.

A. It was put to me on that basis.

Mr. Klein: And your answer is limited solely to that, isn't it?

A. Yes, sir.

Q. (By Mr. Dexter): And, Mr. McNaughton, is that not true as a matter of fact?

Mr. Klein: I object to that question. • • •

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The Court: Objection sustained.

Mr. Dexter: Could we have the answer on the separate record?

The Court: Yes.

Q. (By Mr. Dexter): Would you answer that, please. (1535) Answer the question that you were just asked, whether this difference was a matter of fact also.

A. It is a matter of fact.

Q. Now, is that taken into consideration in any opinion that you might formulate in regard to comparing a tax burden on a savings and loan association with the tax burden on a commercial banking corporation?

A. Yes.

Mr. Klein: My previous objection is interposed. The witness is not qualified to make that kind of expert testimony.

The Court: Same ruling. Objection sustained.

Q. (By Mr. Dexter): In other words, you would use these distinct accepted accounting principles in any analysis that you might have made in regard to the relative tax burdens on these institutions?

Mr. Klein: I object to the question on the same grounds as heretofore stated.

Q. (By Mr. Dexter): Answer the question, please.

Mr. Dexter: I assume it is on the separate record.

Mr. Klein: Just a minute.

The Court: I think, Mr. Dexter, I ruled a few moments ago, and possibly I have misled you or wasn't clear, that while I had previously suggested we put this in the separate (1536) record, you might do so if you wish, at least it seems to me that until you have qualified the witness as an expert on the subject, we should not even have a separate record here.

He just hasn't been doing anything in connection with banks, and yet you bring him here as an expert to testify on banks in these various connections.

He can testify as to anything on building and loan associations. I am not passing on the weight of the testimony, but he has qualified himself as being an expert on building and loan associations. But when you get talking about banks, how do we call a man who hasn't had anything to do with banking himself and expect him to talk as an expert on it?

Mr. Dexter: Your Honor, I asked him if it was based upon his knowledge of accepted accounting principles.

The Court: By what?

Mr. Dexter: And your examination of the exhibits offered in evidence by Mr. Carlson.

The Court: If examining those exhibits makes an expert, you and I are an expert, because we certainly examine them at great length and then cross examine.

Mr. Dexter: But the thing, your Honor, we are trying to qualify him as an expert on is having a knowledge of accounting principles of the savings and loan associations. (1537) I believe your Honor ruled that he has that.

The Court: And as to that, he can tell, if you want him to, how the intangible tax of Michigan imposes a burden upon them. I don't rule that it is relevant, but at least you can make a separate record.

But when he gets to talking as an expert as to how a burden is imposed upon banks, when he doesn't have anything to do with banks, or the Michigan Intangible Tax, or Section 5219, then I fail to see how you have got a qualified expert before us, and why we should litter up the record with that sort of testimony.

Q. (By Mr. Dexter): Mr. McNaughton, are you familiar with the accepted accounting principles involed in bank accounting?

A. Accounting principles for bank accounting are the same as general accounting principles, and I am familiar with them.

Q. In other words, you are familiar with the general accounting principles in commercial corporations?

A. That is correct, and if I were to go in to examine a bank, I think I could do it.

The Court: Well, a few moments ago the same witness, at your direction, or at your inquiry, testified that there is a difference between the accounting principles as applied to the banks and the principles applied to building and loans, and now he says that general accounting principles apply to banks.

(1538) Mr. Dexter: No, your Honor. He says general commercial corporations.

We do not concede that a building and loan association, nor neither does the witness, I believe, that the savings and loan associations are that kind of institution.

Q. (By Mr. Dexter): Is that what you meant by your testimony? You did not include savings and loan associations?

A. Well, I think perhaps I was wrong the other time. If you are talking about labels, that's another thing. If we are talking about principles, that is something else.

I think principles are principles. On the other hand, the label for something is something else again. Do you follow me?

The Court: Another thing, Mr. Dexter, how does the knowledge of accounting principles tell us about what the burden, the impact of these taxes upon a bank is?

Do you think that anyone that knows accounting principles can settle all these problems?

Mr. Dexter: No, your Honor. There is a question of what are the proper accounting principles to be applied in trying to make a proper economic comparative between a savings and loan association on the one hand, and a national banking association on the other.

Now, we may be completely wrong in this type of an approach to this lawsuit, I do not know, but as I said (1539) before, we believe that the discrimination is a practical question.

The Court: As to whether you are right or wrong on that, I said I thought you were wrong, but at any rate, you could make a separate record, but nevertheless, it seems to me you have got to bring in somebody her , if he is going to testify as an expert, if you are going to say that this statute doesn't control us, that it is somewhat indefinite or ambiguous and open to question, and that the Supreme Court decision does not control us, particularly the Minnesota case, that that is open to something or other, there is a field here for opinion evidence, hasn't it got to come fr m a man who is the expert on the subject of banks? If you want him to testify what the burden of taxation on a bank is, hasn't it got to come from somebody who knows something about banks besides being a depositor, and so forth?

I shall sustain the objection to the witness testifying on any kind of a record.

If you want to withdraw him at this time and present him again tomorrow and see if he has really got some computations I should listen to, I am perfectly willing to be corrected. But as it is now, we aren't getting anywhere. We are just wasting time.

Mr. Dexter: All right, your Honor. We will withdraw the witness for now, and if we can mend those

fences (1540) that you find apparent, why, we will recall him.

* * * * *

WOODWORTH, GEORGE WALTER, was thereupon called as a witness on behalf of the Defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

* * * * *

Q. Your present occupation?

A. I am Professor of Finance at the School of Business Administration at the University of Michigan.

Q. Would you describe the undergraduate and graduate degrees that you have obtained and the universities where you have obtained (1541) them?

A. I was graduated from Kansas Wesleyan University in 1924 with an A. B. degree, from the University of Kansas with an M. A. degree, and from the University of Michigan with a Ph. D. degree in economics.

Q. And what was the date of your Ph. D. degree?

A. 1932.

Q. What teaching experience have you had?

A. I was instructor of economics at the University of Michigan between 1925 and 1930. I was Assistant Professor of Finance at the Amos Tuck School of Business Administration in Dartmouth College from 1930 to 1938. I was Professor of Finance at that same school, 1938 to 1952. I was Professor of Finance and am at the present time of the School of Business Administration, University of Michigan, since 1952.

Q. Do you have any affiliation with academic societies?

A. Yes. I am a member of the American Economic Association, the American Finance Association, and American Association of University Professors.

Q. What are your major fields of specialization as a professor of finance?

A. My main field of specialization is money and banking. I also teach investments.

Q. Do you teach management of financial institutions?

A. Yes, I have taught management of financial institutions.

(1542) Q. What experience have you had with the actual management of financial institutions?

A. My practical experience along those lines was in the capacity of trustee of the Dartmouth Savings Bank in Hanover, New Hampshire, from 1936 to 1952. I was also Public Interest Director of the Federal Home Loan Bank of Boston, from 1951 to 1952, and I was a consultant for a public accounting firm, Peisch, Angell and Company, with head offices in Norwich, Vermont, operating throughout New England, between 1943 and 1952.

Q. Now, have you written any articles or books concerning financial institutions?

A. I have, sir. I wrote "The Detroit Money Market" in 1932, a 221 page study of that market.

In 1937, with R. D. Milborne, I wrote "Principles of Money and Banking," a 513 page book.

In 1950 I published "The Monetary and Banking System," a 588 page book.

And in 1956, I published "The Detroit Money Market," 1934 to 1955, a 297 page book.

I have writen articles along the way, but I can't recall the titles of them here at the moment.

Q. You have written various articles also concerning financial institutions?

A: That is right.

(1543) Q. And you are familiar with the financial institutions of savings and loan associations, mutual savings banks and commercial banks?

A. I am as an economist would be, a teacher of finance. My specialty, however, as I indicated, is money and banking, but in the course of teaching I have, as well as from practical experience with mutual savings banks and savings and loan associations. I think I know their economic function, how they fit into the whole financial system. That is more than I would know, small encyclopedic details about those institutions.

Q. Now, could you state what were the original purposes and functions of the national banking system?

A. Your Honor, with your permission, I shall read a large part of my testimony. I think it—

The Court (interposing): Well, is it responsive to the question? That is the main thing.

A. I will try to make it responsive to the question. I don't trust my memory on all the detailed facts that I have, and I think it will add to the order of the court procedure if I do read substantially—I don't expect to read all, but I would like to—

The Court (interposing): I assume what you are reading is your own?

A. That is correct.

(1544) The Court: Not from some textbook.

A. All this here is my own, which I have written myself.

Mr. Klein: * * * I object to it. I think it is not pertinent, not relevant, not material, doesn't bear upon the issue before us.

The Court: What is your theory, Mr. Dexter?

Mr. Dexter: In the first place, your Honor, I believe it bears materially upon the three facets of this litigation. One is are savings and loan associations the kind of institutions that are to be brought within the purview of 5219, and we believe, of course, that there is definite authority, as your Honor is well aware, that they should not be, but that is going to be considered. Also, we believe that comparing those types of institutions with national banks and their functions and (1545) purposes historically and in 1952 is significant, and Mr. Woodworth is qualified to make this kind of comparisons from an economic point of view, and we believe it is material.

The Court: Bearing upon which one of these issues of which you speak?

Mr. Dexter: The first is the character and kind of institutions compared and contrasted—that is, savings and loan associations and commercial banks—and also the issue of the question of competition and the question of tax discrimination in an economic sense.

The Court: On the last, I will sustain the objection. I am somewhat in doubt as far as competition, but I can see how conceivably it might have some bearing in there.

Mr. Dexter: He is going to try and compare and contrast these institutions.

The Court: It seems to me it is more a question of whether they do compete in fact than as to whether one writing as an analyst as to what the proper place of each institution is in our financial picture may not be just the same as whether there is actually in fact competition. However, I can see conceivably there is some bearing on that.

On the other point, on the question of the tax burden I sustain the objection.

* * * * *

(1546) Q. (By Mr. Dexter): The first question, Professor Woodworth, was what were the original purposes and functions of the national banking system?

A. Analysis of statements of the founders of the national banking system shows conclusively that the original purpose was primarily to eliminate weaknesses in the monetary system, rather than to provide more adequate lending facilities for businesses and individuals. More specifically, the purpose was to provide the nation a safe and uniform currency that would circulate at par throughout the country, to provide safe depositaries for the United States Treasury, and to create safe banks of deposit for businesses and the general public.

That the primary objective of the National Banking Act was a monetary one is evident from (1) the title of the act, (2) statements by Salmon P. Chase, Secretary of the Treasury, who was one of the most vigorous promoters of the plan, (3) Congressional debates on the bill, and (4) statements by the Comptroller of the Currency, the chief administrative officer of the national banking system. After the new banking system was in operation, speaking of each one of these in order, the title of the Act speaks for (1547) itself. I quote the title and Act, "An Act to provide a National Currency, secured by a Pledge of United States Bonds, and to provide for the Circulation and Redemption thereof."

With reference to the second point, statments of the Secretary of the Treasury, in his annual report to Congress in 1861, page 19, Salmon P. Chase, Secretary of the Treasury, commented on the proposed national banking system as follows:

"Its principal features are, first, a circulation of notes bearing a common impression and authenticated by a common authority, second, the redemption of these notes by the associations and institutions to which they may be delivered for issue; and, third, the security of that redemption by the pledge of United States stocks, and an adequate provision of specie. The notes this issued and secured would, in his judgment, form the safest currency which this country has ever enjoyed; while their receivability for all government dues, except customs, would make them, wherever payable, of equal value as a currency, in every part of the Union."

With reference to the third point, the Congressional discussions, Senator Sherman from Ohio, member of the Committee on Finance who presented the Sherman Bill, labelled Senate No. 486, to the Senate, spoke on February 10, 1863, as (1548) follows:

"Now, sir, what benefits do the people derive from this system? They would have a currency that would be safe, uniform, and convertible. They would have all that can be desired in any community; a currency limited in amount, restrained by law, governed by law, checked by the power of visitation, checked by the limitation of liabilities, safe, uniform, and convertible in every part of the country."

That quotation is taken from the Congressional Globe, Part I, 1862-1863, page 844, and with reference to the Comptroller of the Currency, subsequently to the formation of the national banking system, in his annual report of 1866, which is given in the United States

Treasury Report for 1866, page 75, Mr. H. R. Hulburd, Acting Comptroller of the Currency, stated:

"In conclusion, I have only to state that the national banking system is now fully inaugurated, and in successful operation. The first bank was organized in June, 1863. There are now in active operation 1,647, with an aggregate paid-in capital of $418 million which is owned by 200,000 stockholders. The system has the confidence of the people, because it furnishes a circulation secured beyond any contingency, and is popular because it furnishes a currency of (1549) uniform value in all parts of the country.

"It has superseded all existing state banking systems. It places the entire control of the currency in the hands of the Federal Government. It has proved during its three years of existence a most important auxiliary in the financial operations of the Treasury Department."

Q. Why was the primary emphasis on this monetary reform by the founders of the National Banking System?

A. I should say, sir, that the primary emphasis on monetary reform by the founders of the National Banking System grew out of the chaotic state of the currency during the period following the failure to renew the charter of the Secoid Bank of the United States in 1836 and extending to the establishment of the National System.

Between one thousand and sixteen hundred state chartered banks issued notes of different designs and sizes, and worst of all these notes varied in value from worthless to par.

Senator Sherman stated before the Senate that there were over seven thousand genuine kinds of notes in 1862 and some six thousand six hundred kinds of counterfeits. Mr. Sherman made that statement in a speech before the Senate February 10, 1863, quoted in the Congressional Globe, Part 1, 1862 to '63, page 84.

Moreover, the notes of sound banks were discounted (1550) more and more heavily as they strayed farther from the point of redemption. Merchants had to subscribe to currently published bank note dictators listing values of notes and giving assistance in spotting counterfeits. Bank failures with their crippling losses to note holders and depositors were so numerous and widespread that public confidence in banks all but disappeared.

* * * * *

(1551) The Court: * * * I can't help but agree as a lawyer and judge with counsel's objection that this has any bearing upon any issue in this case. You may make a separate record. I won't prevent you. And I should rather enjoy sitting here listening to it, but I shall not find a great deal of meat in it so far as deciding the issues I have to decide. I will find a lot of meat insofar as history is concerned.

* * * * *

(1553) A. Do you wish me to proceed as I was?

Mr. Dexter: Yes.

A. The preceding sentence, in order to get the continuity, bank failures, with their crippling losses to note holders and depositors, were so numerous and widespread that public confidence in banks all but disappeared.

For examples, there were 28 banks in Michigan in 1839, but by 1843 there were only 2, and in 1848 and

1849 there was only one bank; the number of banks in Ohio dropped from 37 in 1840 to 8 in 1844 and 1845; the 19 banks in Kentucky in 1851 were reduced to 4 in 1853; the number in Tennessee declined from 26 in 1838 to 1 in 1851-1857. These references are quoted from the Annual Report of the Secretary of the Treasury, 1876, pages 222 to 228.

The lack of safety of banks was not only a drain on (1554) business and consumers, but was also a serious obstacle to Federal Government finance. Since the Treasury cound not safely keep deposits in the banks, the Acts of 1840 and 1846 established an Independent Treasury System with subtreasuries in leading cities. Under these acts the treasury could receive taxes and other receipts only in specie and Treasury notes, and public funds had to be kept in its own treasuries.

This arrangement caused periodic disturbance in the money and capital markets, owing to the periodic withdrawals and outpayments of specie reserves. In addition, the Treasury could not rely on the banks to assist in its debt management operations—that is, borrowing, redeeming securities, refunding securities, and so on.

The founders of the national banking system contemplated that national bank notes would become the only currency, aside from coins, as soon as the emergency issue of United States notes, popularly called the greenbacks, could be retired in the years following the Civil War.

In his annual report in 1862, pages 17 and 18, Salmon P. Chase, Secretary of the Treasury, after pointing out the objections to permanent issuance of United States notes, stated:

> "The central idea of the proposed measure is the establishment of one sound, uniform circulation, of equal value throughout the country.

(1555) "It seems difficult to conceive of a note circulation which will combine higher local and general credit than this. After a few years no other circulation would be used."

Similarly, in a speech before the United States Senate in support of the national banking bill, Senator Sherman stated:

"We are about to choose between a permanent system, designed to establish a uniform national currency based upon the public credit, limited in amount, and guarded by all the restraints which the experience of men has proved necessary, and a system of paper money, without limit as to amount, except for the growing necessities of war. The issue of Government notes can only be a temporary measure, and is only intended as a temporary measure to provide for a national exigency."

Q. (By Mr. Dexter): Were there any other functions contemplated by the founders of the national banking system?

A. Yes, I think there were. In addition to these monetary functions that I have just referred to, the founders of the national banking system contemplated that national banks would do a general banking business. The most important secondary function was making loans. Loans to one interest were limited to 10 per cent of capital, and the rate charged on loans could be no higher than the rates permitted state banks in (1556) the state of location.

It was contemplated that loans would be principally of a short-term, self-liquidating nature, as evidenced by the prohibition of loans secured by real estate mort-

gages, except to safeguard pre-existing debts, in the amended Act of June 3, 1864.

Q. Now, were there any important economic changes after the enactment of the national banking system?

A. Yes, there have been.

Q. And up to 1952, could you state what some of those changes were?

A. Well, I should say first that the national banks provided a large part of the currency until 1935, when national bank notes were redeemed by issuing national banks. In fact, national bank notes were the dominant component (usually 30 per cent to 40 per cent) of the currency between 1866 and 1914, when Federal Reserve notes became the most important component of the currency.

Mr. Dexter: I assume, your Honor, that the answer to that question was on the regular record—it is the period up including 1952—with no objection to the question.

The Court: Well, this wasn't offered on the regular record, and counsel had no opportunity to object unless he interrupted.

Mr. Dexter: Well, I would like to offer it on the (1556½) regular record.

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(1557) The Court: We may consider that from now on, from the last preceding question on, we are on the general record and counsel may object if he feels it improper.

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Q. (By Mr. Dexter): I would like to hand you, Professor Woodworth, (1558) an exhibit marked 219 and ask you if that illustrates some of these changes that you have made reference to?

A. Yes, it does.

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Q. Did you prepare Exhibit 219, Professor Woodworth?

A. I did.

Mr. Dexter: I would like to offer Exhibit 219 in evidence as part of Professor Woodworth's testimony.

* * * * *

(1559) Q. * * * Will you explain, Professor Woodworth, what Exhibit 219 is?

A. As the title indicates, it is to be generally described as selected assets and liabilites of all national banks in the United States on selected dates since 1865.

Q. Is there indicated on the exhibit the source of the information?

A. All the sources of data appearing on this exhibit are given at the bottom of the table, sir.

Q. And this exhibit was prepared by you personally?

A. That is correct.

* * * * *

Mr. Klein: Your Honor, may I ask Mr. Dexter (1560) to state what the purpose of this offer of this exhibit is?

Mr. Dexter: To show the nature of the banking business, the change in its development throughout the period from the enactment of 5219 through 1952, and there is also on the separate record that data after the date December, 1952.

We think it germane, your Honor, the question of the business of banking in terms of any question of substantantial competition.

Mr. Klein: May I ask some more questions?

The real estate mortgage data, does that relate to new mortgages issued by the banks?

A. It relates to the amount of real estate mortgages outstanding on the dates given.

Mr. Klein: But it doesn't give which are new and which were pre-existing?

A. No, it does not.

Mr. Klein: And you have no data on that?

A. I have no data on that. This is simply an exhibit to show—

Mr. Klein (interposing): The balance sheet condition at different dates?

A. That is right.

Mr. Klein: It merely shows balance sheets of all of the banks as a whole in the United States?

A. All of the national banks.

Mr. Klein: In Michigan or in the United States?

(1561) A. In the entire United States.

Mr. Klein: On various dates?

A. On various dates.

* * * * *

The Court: It is received.

Q. (By Mr. Dexter): You stated, Professor Woodworth, that there were some important economic changes after the establishment of the National Banking System up to 1952, and would you state what some more of those changes were?

A. The second one also shown on Exhibit 219 is that the use of check book money which we more technically call demand deposits developed rapidly after the Civil War; whereas the amounts of currency and check book money were about the same at the outbreak of the Civil War, there were over three adjusted demand deposit dollars for one currency dollar by 1900 and the ratio rose to about above six to one in 1929-1930.

The national banks have provided between 49 (1562) per cent and 58 per cent of this check book money in the United States since 1875.

Q. And does Exhibit 219 show that information?

A. It does.

Q. Now, would you describe the process by which national banks create check book money?

A. I will try to do so, sir. The creation of this check book money is probably the most distinctive function of national and other commercial banks, as compared with all other financial institutions, including savings and loan associations and mutual savings banks. Demand deposits are created and I underlined created when national banks increase their loans and investments. For example, if Michigan National Bank has an excess legal reserve balance of $100.00, it is in position to loan a customer $100.00 but the customer needing the money to pay debts soon draws checks for approximately the amount of the newly created deposit of $100.00. These checks are then deposited by the payees, let us say, in the Old Kent Bank in Grand Rapids. Old Kent then has both demand deposits and legal reserves increased by $100.00 and is in position to lend the amount of the excess reserve which is the $100.00 less the legal reserve requirement on the $100.00 deposit.

Assuming a twenty per cent legal reserve requirement, this would be $80.00, but the borrowing customer would soon draw checks to pay debts again. These checks would be (1563) deposited in other banks, say, in Manufacturers National Bank of Detroit, which would increase both its demand deposits and its legal reserves by $80.00. Manufacturers is then in position to lend the amount of its excess reserves or $64.00, thus creating $64.00 of new demand deposits.

This process which has in these three steps created new deposits of $100.00 plus $80.00, plus $64.00, a total of $244.00 can proceed in successive steps until $100.00 of excess legal reserve originally in the hands of Michigan National Bank has been widely disbursed and fully utilized in support of the newly created deposits.

On our assumption of a legal reserve requirement of twenty per cent, this amount of new deposits would be $500.00. That is 100 twentieths times the original $100.00 excess reserve.

If the legal reserve were ten per cent, the amount of new deposits could be $1,000.00, that is 100 tenths or ten times the original excess reserve of $100.00 possessed by the Michigan National Bank.

If the legal reserve were fifteen per cent, the amount could be $667.00; that is 100 fifteenths of the $100.00.

Q. Now, is there any other way that the commercial banks can create money?

(1564) A. Well, the hundred dollars of excess legal reserve of the Michigan National Bank with which we began this illustration could come to it in various ways, if that is what you have referred to.

It could have gained this legal reserve from other commercial banks by the daily clearing and collection of checks that would have been passed around existing legal reserves, one bank to another.

It could have been because currency deposits came into the Michigan National Bank, people in the community not requiring quite so much currency. If so, that would have built up both their deposits and their reserves, and they might have had the hundred dollars of excess reserves come into them in that fashion.

Perhaps more important, Michigan National Bank might have derived a hundred dollars of legal reserve balance by borrowing at the Federal Reserve Bank of

this district, the Federal Reserve Bank of Chicago. If they had borrowed a hundred dollars, that would be the basis of this multiple expansion of demand deposits called creation of check book money.

Well, I could mention one more, if you wish, and this is exceedingly important in the monetary system. The Federal Reserve authorities take the initiative in flowing out more reserve money's to the banks, taking it away as a matter (1565) of general monetary management, and if the Federal Open Market Committee had purchased hundred dollars of United States Government securities, they would have passed out one hundred dollars more of this legal reserve money that would land in the commercial banks, and it might have been the Michigan National Bank and been the starting point of this process that I described.

Q. Can other financial institutions and savings and loan associations and mutual savings banks create check book money?

A. No, there is no other financial institution, no other individual in our whole social system or economy who can create money in that sense. They can only use the money that comes to them in the course of their business and spend it. They can use existing money, but they do not create money.

Q. Now, Professor Woodworth, are there any other changes that you think significant since the enactment of the National Bank System up to and through 1952?

A. Well, I should say that it is important that time and savings deposits were relatively unimportant to the banks until after the First World War. In fact, legal reserve requirements of national banks made no distinction between demand and time deposits before the Federal Reserve Act of December 23, 1913 and mid-year

1915, time deposits of national banks were only 10.9% of total assets, and in 1919 this ratio was 13.4%.

(1566) Q. Have you prepared ~~a table~~ or exhibit to illustrate that, Professor Woodworth?

A. I have prepared such an exhibit.

Q. I would like to show you an exhibit marked 218 and ask you to idenfify it.

A. Yes, I identify that.

Q. Did you prepare the exhibit marked 218 yourself?

A. I did, sir.

Q. Does it indicate the source of the physical information appearing thereon on its face?

A. It does.

Q. And what does it show? Does it show the proportion of time deposits to total assets of all national banks in the United States on selective dates?

A. It does.

Mr. Dexter: I would like to offer Exhibit 218 in evidence in connection with the Professor's testimony.

Mr. Klein: No objection.

The Court: Received.

Q. (By Mr. Dexter): Referring to Exhibit 218, would you illustrate the changes indicated thereon in this time deposit money?

A. Time deposits and other savings accounts were held mainly by other financial institutions that were legally permitted to make real estate mortgage loans. That is, mutual savings banks, savings and loan association, including cooperative (1567) banks and state chartered ~~banks and trust~~ companies.

The fact that national banks were legally prohibited from making residential real estate loans until 1916 and that close legal restrictions made such loans impractical

until 1927 was the main reason that national banks left the deposit business for other specialized institutions.

Q. Any other significant changes?

A. I would add that time and savings deposits business became more important to national banks after 1927 when legal restrictions on making real estate loans were liberalized. By 1930 the ratio of total time deposits of individuals, partnerships and corporations reached 27.5% of total assets of all national banks. Since that time, however, this ratio has declined, standing at 20.4% in June 1952 as shown on Exhibit 218.

Q. Were real estate loans relatively important to national banks after the First World War?

A. Real estate loans were relatively unimportant to national banks until after the First World War. As indicated above, national banks were prohibited from making such loans until the Federal Reserve Act of December 1913 permitted mortgage loans on farm land, but the maturities not exceeding five years.

Mortgage loans on urban property were prohibited until September 1916, when the National Bank Act was amended to permit such loans, with the maturities not to exceed one year, and I would refer there to the Federal Reserve Bulletin, (1568) September 1, 1916, page 441, amendment of Section 24.

But these restrictions were so onerous that at midyear 1919 real estate loans of national banks were only nine-tenths of 1% of total assets.

Section 24 of the Federal Reserve Act was amended by an act approved February 25, 1927, which extended the maximum maturity of urban mortgage loans to five years, but the total of such loans was limited to 25% of capital and surplus, or one-half savings deposits, whichever was higher.

With this liberalization such loans of national banks expanded to 5.1% of total assets in 1930.

Q. Professor Woodworth, have you prepared a table illustrating this change in the real estate loans of all national banks in the United States?

A. I have prepared such a table.

* * * * *

Q. I will show you, Professor Woodworth, an exhibit marked 220 and ask you if that is such a table?

A. That is the table, sir.

Q. Was that prepared by you?

A. It was.

Q. And does the table indicate the source of the data you have used on the exhibit?

A. It does.

(1569) Mr Dexter: I would like to offer in evidence in connection with Professor Woodworth's testimony Exhibit 220.

Mr. Klein: Subject to our checking the sources, we have no objection to the exhibit, sir, 220.

The Court: It will be received on that condition.

Q. (By Mr. Dexter): Now, Professor Woodworth, with Exhibit 220 before you, would you continue with the testimony you were giving about the real estate loan significance?

A. I will, sir. The preceding comments and those that follow pertain to Exhibit 220.

Further liberalization of Section 24 was made in the amendments approved June 24, 1934, and August 23, 1935, which permitted a national bank to make real estate loans not to exceed 60% of appraised value of the property and for a term not longer than ten years, provided the schedule of amortization payments was

sufficient to retire 40% of the principal within ten years.

Reference for that statement is Federal Laws Affecting Banks as of January 1, 1936, pages 194, 195, a publication of the Controller of the Currency.

Federal Housing Administration insured loans provided for in the National Housing Act of 1934 were not subject to these restrictions, as indicated in 1948 Statute 1246-1934, USCA 1701-1733.

(1570) These amendments also raised the aggregate limit on real estate loans, including FHA's, of a national bank to the amount of capital and surplus or 60% of its time and savings deposits, whichever was greater.

Under these more liberal provisions and the Veteran's Administration Real Estate Loan program provided in the Servicemen's re-adjustment Act of 1944 the proportion of total real estate loans of national banks to total assets rose to 7.6% in 1952, as shown in Exhibit 220.

* * * * *

Q. Were there any other significant changes?

A. I might comment on the bond investment and other security investments of all national banks, principally in the form of United States Government securities, rose markedly in amount and in proportion to total loans and investments after the 1920's.

At the end of 1929 the investments were 42.6% of total loans and investments. By the end of 1940 this proportion rose to 57.7%, and by the end of 1946 it increased further to 72.9%

After the Second World War, total investments declined to provide funds to meet expanding demands for

loans, and by the end of 1952 the proportion to total loans and investments had receded to 55.1%.

(1571) The percentages in this paragraph were calculated from data provided by the annual reports of the Controller of the Currency 1930, page 34; 1941, page 9; 1946, page 4; 1952, page 12.

It should be noted, however, that holdings of tax exempt securities increased substantially during the postwar years. A large decline took place in holdings of United States securities.

Q. What was the status in the business of national banking in 1952?

A. I would begin by saying in answer to that question that the primary function of national banks in 1952 remained as it was in the beginning a monetary one.

First, the national banks provided 56% of check-book money, otherwise known as adjusted demand deposits, in the United States at the end of 1952, the money with which over 90% of total money payments is made in the United States.

That is shown in Exhibit 219 which you possess.

Second, national banks performed the monetary function in 1952 of receiving on deposits, paying out, clearing, collecting and transferring on their books over one trillion dollars of check-book money, about three-fifths of the total money payments in the United States.

Third item under monetary functions, the national banks provided very important currency services to customers (1572) by keeping on hand a stock of the different denominations, paying out currency on demand, and receiving it on deposit.

Fourth, the national bank served as depositories of the federal government, holding at the end of the 1952 3 billion 252 million dollars, which was 62% of the treas-

ury's total balances of 5 billion 259 million held by commercial and savings banks on that date.

For that information I refer you to Federal Reserve Bulletin, July 1953, page 736, and the annual report of the Controller of the Currency 1952, page 12.

Next, the national banks performed a number of other less important monetary services, including purchase and sale of foreign exchange, purchase and sale of domestic demand drafts, issuance of customer's checks, certification of customer's checks, sale of traveler's checks, accepting time drafts drawn on them under letters of credit or otherwise, collection of demand and time drafts for customers, holding legal reserve balances of commercial banks that are not members of the Federal Reserve System, and the mutual savings banks, and holding primary reserve balances of all types of commercial banks. Those are the monetary functions as such.

The next items I might mention are largely nonmonetary.

(1573) Q. These are what you have considered the primary functions of national banks in 1952?

A. That is correct. The primary function I conceive to have been a monetary one; a secondary function involving loans and investments and other activities, which I would be glad to comment on if you desire.

Q. Now, would you state, then, what you believe to be what I might refer to as the secondary functions in 1952?

A. Well, the national banks were important in the field of time and savings deposits, holding 23 billion 118.5 million at the end of 1952. This represented 23 per cent of their total deposits of 99 billion 257.8 mil-

lion. For that, I refer you to the Annual Report of the Comptroller of the Currency, 1952, page 12.

These deposits—that is, time and savings deposits—of 23 billion 118.5 million represented 35 per cent of total time deposits in the country, which were 65 billion 799 million at that time, and 27 per cent of combined time deposits and savings and loan shares, which combined amount was 84 billion 994 million. For the reference, I indicate the Federal Reserve Bulletin, July, 1956, page 722.

* * * * *

(1574) Q. * * * Would you continue with this comparative, please?

A. I might comment on the liquidity requirements. The liquidity requirements of national banks were larger than those of any other type of financial institution at the end of 1952, unless it would be certain state chartered commercial banks. This was a consequence of the fact that 77 per cent of their deposits were payable on demand, and that the rest of their deposits (time and savings) were in fact demand or near-demand obligations. Primary reserves, consisting of cash, balances with other banks, legal reserve balances, and cash items in process of collection on the above date amounted to 26 billion 399 million. The source of that figure is from the Annual Report of the Comptroller of the Currency, 1952, page 12, or 24.4 per cent of total assets in this non-earning form.

In addition, they felt obliged to hold liquid secondary reserve assets of 25 billion 31 million in the form of marketable United States Government securities maturing in five years or less—another 23.2 per cent of total assets on (1575) which yields were low in view of their features of highest quality and ready marketability.

The reference for this figure on secondary reserve assets of 25 billion 31 million is Board of Governors of the Federal Reserve System, Member Bank Call Report, No. 126, page 6.

Q. Now, did you consider the loan and discount business of national banks as a secondary activity in 1952?

A. Secondary to the monetary function, yes, and a very important function, but secondary to the monetary function.

Q. Would you explain what that is, please?

A. The loan and discount activity?

Q. Yes. Explain its condition in 1952.

A. Loans and discounts of national banks, representing the money capital distribution function, were 36 billion 521.4 million at the end of 1952, or 33.9 per cent of total assets of 107 billion 830.4 million dollars. The reference for those figures is Board of Governors of the Federal Reserve System, Member Bank Call Report, No. 126, pages 3 and 6.

Q. And does that indicate how the loans were distributed by types?

A. It does. The loans were distributed by types as follows:

Commercial and industrial loans were 16.9 billion, which was 46 per cent of the total loans.

Loans to farmers were 1.9 billion, which was 5.2 per cent of the total loans.

(1576) Loans secured by stocks and bonds were 1.5 billion, or 4.1 per cent of the total loans.

Real estate loans were 8.2 billion, or 22.5 per cent of total loans.

Loans to consumers were 7.1 billion, or 19.5 per cent of total loans.

* * * * *

A. All other loans are thrown in one category, which amounted to a little less than 1 billion dollars, or 2.7 per cent of the total loans, the total loans being 36 billion 521.4 million.

Thus, you see loans to businesses and farmers accounted for 51.2 per cent of total loans, real estate loans for 22.5 per cent, and consumer loans for 19.5 per cent, and the remaining 6.8 per cent consisted of security loans and this catch-all category of all other loans.

Q. Would you make reference to the investment securities in 1952 by national banking associations?

A. Well, the investment securities of the national banks, including the secondary reserve asset item of 25 billion 31 million that I mentioned earlier, and longer term funds amounted to 44 billion 176.3 million at the end of 1952, or 41 per cent of total assets.

(1577) Q. Now, referring to 1952, were savings and loan associations similar to national banking associations?

A. I should say they were not.

Q. Were they similar to any other financial institution?

A. Yes, I should say savings and loan associations were quite similar to mutual savings banks.

Q. What are the basic similarities between mutual savings bank and savings and loan associations?

A. Well, I can mention several similarities. I would say, first of all, that both institutions were from the beginning organized as mutual thrift associations without shares of capital stock, in contrast with private business and commercial banking corporations whose capital stock was owned by a separate group seeking to make a business profit.

In the second place, both institutions had their beginnings in the 18th and early 19th centuries to meet the

need for thrift or savings facilities for the emerging class of small savers.

The first real mutual savings bank was established at Ruthwell, Scotland in 1810, and was known as Henry Duncan's Bank. The idea spread to the United States, where the first mutual savings bank, The Philadelphia Savings Fund Society, was begun in 1816 and incorporated in 1819. The reference for this historical material is from W. H. Kniffin, a book entitled *The Savings Bank and Its Practical Work,* published (1578) by Bankers Publishing Company in 1928, pages 6 to 10 and 16 to 18.

The origin of the savings and loan type of association is usually traced to Birmingham, England, where a Building Society was organized in 1781. The first such association in the United States was founded in Frankford, Pennsylvania in 1831. The reference for that statement is American Savings and Loan Institute Press, a book entitled *Savings and Loan Principles,* published in Chicago in 1957, pages 23-24.

* * * * *

* * * By accumulating the rivulets of savings of thousand and tens of thousands of families into one pool, these savings could in turn be lent for productive purposes—chiefly to finance home ownership.

Thirdly, I should say that both institutions have always stood ready to accept thrift accounts from small savers; that is, their facilities have been non-exclusive and not for a restricted group—except that both have frequently limited the maximum amount of funds acceptable from one person.

Fourth, both institutions gave evidence of the amount of savings of each customer in a savings account on

their books and in a savings passbook or other similar record retained by the customer.

Fifth, there has come to be little difference in substance between the deposit debt accounts to customers of (1579) mutual savings banks and the capital share accounts of customers of savings and loan associations as the situation has evolved.

In both institutions the real protection to savings customers is the sound value of loans, investments, cash reserves, and other assets administered by the management, buttressed by a fund of surplus and other equity reserves accumulated from net earnings retained in the business.

In the event of failure of either type of institution, the only protection for savings customers is the value of assets, if insurance of accounts be disregarded. A customer can realize no more than his proportionate share of the net liquidation value of the insolvent institution, whether his evidence of savings takes the form of a deposit debt or of savings shares.

(1580) Moreover, since 1934, the share accounts of all federal savings and loan associations and the bulk of those of state-chartered associations have been insured by the Federal Savings and Loan Insurance Corporation, $5,000 per account before 1950 and $10,000 per account since that time.

At the end of 1952, assets of insured associations were 86.7 per cent of total assets of all savings and loan associations, and at the end of 1957 this proportion had increased to 92.2 per cent.

Reference for that figure is the United States Savings and Loan League, Fact Book, 1958, page 87.

This means that even though the customer's evidence of amount of savings is the form of savings shares, the dollar amount of the account is insured. This in effect

transforms the savings shares to the status of an obligation of the Federal Savings and Loan Insurance Corporation.

In addition to its own resources, this corporation is empowered by law to borrow up to $750 million from the United States Treasury if such borrowing is needed to meet insurance liabilities.

In view of these protective features and the no-loss record of insured savings shares since the Federal Saving and Loan Insurance Corporation was established in (1581) 1934, the savings customers of insured associations typically regard the safety of their capital share accounts as equal to that of insured deposits in mutual savings banks.

Sixth, both institutions regard real estate mortgage loans for the construction, purchase, or improvement of residential property as the primary form of investment of savings entrusted to them. After allowing for liquidity needs and legal reserves, the managements of both institutions typically give first priority to home mortgage loans in the area of their location. Only funds that cannot be soundly committed to such loans are invested in investment securities.

Seventh, Congress recognized the basic similarity of these two institutions in the Federal Home Loan Bank Act of July 22, 1932. Membership in the Home Loan Bank system was required of all federal savings and loan associations, and was opened to mutual savings banks as well as to state-chartered savings and loan associations on a voluntary basis. A number of mutual savings banks have joined this system.

* * * * *

(1582) Q. * * * Would you continue in regard to the similarities between these two institutions, that is

mutual savings banks and savings and loan associations?

A. Going back to point No. 7, Congress recognized the basic similarity of these two institutions in the Federal Home Loan Bank Act of July 22, 1932. Membership in the Home Loan Bank system was required of all federal savings and loan associations, and was opened to mutual savings banks as well as to state-chartered savings and loan associations on a voluntary basis. A number of mutual savings banks have joined this system.

Eighth, thus, the only noteworthy distinction between savings and loan associations and mutual savings banks is the legal one that savings share accounts are an equity claim while savings deposits represent a debt claim. As indicated above, this difference has evolved not to be one of real substance.

(1583) It follows, therefore, that the policy of the federal government with respect to taxation of national banks capital shares should be applied in the same manner to savings and loan associations that it is applied to mutual savings banks.

* * * * * * *

(1585) Q. * * * Professor Woodworth, I would like you to contrast and compare the business of national banks with the business of savings and loan associations in 1952.

Mr. Klein: On the question of competition?

Mr. Dexter: On the question of competition.

Mr. Klein: Your Honor, I object to any opinion evidence on that subject.

The Court: If I may interrupt, I didn't understand him to ask whether they do compete. He asked them to contrast and compare their activities.

(1586) Mr. Dexter: That is right.

Mr. Klein: All right; this has been general. This doesn't pertain to the particular banks that savings banks compete in the city with, that the Michigan National Bank competes with.

He hasn't testified that he knows anything about those operations.

The Court: I understand.

Q. (By Mr. Dexter): Would you answer the question, Professor Woodworth?

A. As developed above, the great bulk of the business of national banks in 1952 was in fields that savings and loan associations do not enter at all or enter only in a minor way. These fields included first, the creation of check book money by making loans and investments; two, receiving and paying out, clearing, collecting and transferring check book money; three, serving as warehouses for currency, receiving currency on deposit and paying out currency on demand; four, serving as depositories of the federal government; five, purchase and sale of foreign exchange; six, purchase and sale of domestic demand drafts; seven, issuance of officers' checks; eight, certification of customers' checks; nine, holding primary and legal reserve balances of other banks; ten, short-terms loans to businesses for working capital purposes; eleven, term loans to businesses for fixed capital purposes; (1587) twelve, short term loans to farmers; thirteen, long-term mortgage loans to farmers; fourteen, loans to consumers (a) on secured installment basis; (b) on unsecured installment basis, (c) on single payment basis; fifteen, loans to brokers and dealers secured by stocks and bonds, loans to individuals secured by stocks and bonds for the purpose of purchasing or carrying securities; sixteen, providing

trust department services; seventeen, accepting time drafts drawn on them usually under letters of credit and thereby creating bankers' acceptances and eighteen, collecting demand and time drafts for customers.

In addition, national banks provide safekeeping services and sell travellers' checks, services which are unimportant in the savings and loan business.

Second, competition between national banks and savings and loan associations was confined almost entirely in 1952 to (a) thrift savings accounts and (b) residential real estate mortgage loans, the specialized fields in which savings and loan associations operate almost exclusively.

Third, one measure of the extent of competition between national banks and savings and loan associations and mutual savings banks is given in the exhibits that I have prepared.

* * * * *

(1588) Q. * * * I have marked and identified on the record, Professor Woodworth, exhibits marked 221, 222 and 222-A. I hand you Exhibit 221. Did you prepare that exhibit?

A. I did.

Q. And does it indicate on its face the source of the data that you used in its preparation?

(1589) A. Yes.

Q. I hand you Exhibit 222 and ask you the same questions. Did you prepare that exhibit?

A. I did.

Q. Does it indicate on its face the source of the data that you used in its preparation?

A. It does.

Q. And I show you Exhibit 222-A and ask you to identify it.

A. 222-A indicates the proportion of time and savings deposits or savings share accounts to total assets of national banks, savings and loan associations and mutual savings bank in selected years, 1913 to 1957. I prepared it and the references are there.

Q. You prepared it from information that was previously set forth in Exhibits 218, 221 and 222 that you have testified in reference to?

A. That is correct.

Mr. Dexter: I would like to offer in evidence with Professor Woodworth's testimony, Exhibits 221, 222 and 222-A.

Mr. Klein: Subject to check, there are certainly no objections.

The Court: Proceed.

Q. (By Mr. Dexter): Would you state, Professor Woodworth, what Exhibit 222-A shows?

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(1590) A. 222-A shows the proportion of the time and savings deposits or savings share accounts to total assets of national banks, of savings and loan associations, and of mutual savings banks in selected years, 1913 to 1957.

Mr. Klein: What do you mean by proportion? Would you explain that, sir?

A. Percentage.

Mr. Klein: Take 1952. Under the heading of national bank, it shows 20.4% of what?

A. Total assets.

Mr. Klein: Of total assets of the bank or what?

A. Of the bank; all national banks were represented by time and savings accounts.

Mr. Klein: This relates to assets of each institution considered separate?

A. In relation to their total assets.

* * * * *

Q. * * * Will you continue your testimony in regard to the exhibit.

The Court: What does NA mean?

A. Not available, sir.

Q. * * * Will you explain the proportion you set forth there, Professor Woodworth?

(1591) A. In 1930 this proportion was 27.5% for all national banks compared with 71.3% in all savings and loan associations and with 89.4% in all mutual savings banks.

In 1952 these proportions were 20.4%, 84.8% and 89.5%, respectively, as indicated in Exhibit 222-A. Thus the share of the total business of national banks that overlapped as measured on this basis declined appreciably between these two dates from 27.5% to 20.4%.

It should also be noted from these proportions shown on Exhibit 222-A—

Q. (Interposing): Are those proportions materially overstated?

A. It does show that the proportions on Exhibit 222-A materially overstate the competitive area of operations between national banks and savings and loan associations.

Q. Why is that, Professor Woodworth?

A. In that time deposits of individuals, partnerships and corporations include certificates of deposit and other time deposits of national banks, which in general consist of relatively large accounts of business firms and wealthy individuals, the types of accounts that are not held at all or only to a very limited extent by savings and loan associations.

Q. Have you prepared a table that shows the classification of time deposits, savings deposits in national banks?

A. I have.

• • • • •

(1592) Q. * * * I show you, Professor Woodworth, a table marked Exhibit 223 and ask you to identify it.

A. I identify it as having been prepared by me.

Q. And does the source of information that you used to prepare that exhibit, is it indicated on the exhibit?

A. It is.

Mr. Dexter: I would like to offer Exhibit 223 into evidence as part of the testimony of Professor Woodworth.

Mr. Klein: What is it designed to show, Professor?

• • • • •

Q. (By Mr. Dexter): Will you explain what the exhibit shows?

A. The purpose of the exhibit is to break down the time and savings deposits of all national banks into different categories, and to separate out the category that is most comparable to savings and loan shares, which is savings passbook accounts rather than time certificate of deposits or other time deposits, which, as I have already indicated, are primarily rather large accounts that are owned by business firms or rather wealthy (1593) individuals rather than the small saver who is in the passbook business for the bank or for the share account for the savings and loan association.

Mr. Klein: You included certificates of deposit in that, too, I suppose?

A. In the total time deposits, a breakdown into each category.

Mr. Klein: No objection to 223, subject to check.

The Court: Received subject to check.

Q. (By Mr. Dexter): Would you indicate what is a more comparable measure of the overlap of activities

between the savings and loan associations and national banks by reference to Exhibit 223?

A. I should say that a more comparable measure than the relation of time deposits to total assets which we have been considering previously—

Q. (Interposing): That is as indicated in Exhibit 222?

A. Yes. —is the proportion between the savings passbook accounts and total assets of national banks.

In 1930 this was 20.8%, compared with 27.5% on the basis above.

On the assumption that this same proportion between savings passbook accounts and time deposits of individuals, partnerships and corporations—that is, 20.8% to 27.5%—obtained in 1952 in all national banks, the extent of competition of national banks with savings and loan associations would be reduced to 15.4% in this field.

(1594) Q. Do you have those figures in reference to the Michigan National Bank?

A. In the case of Michigan National Bank, the proportion of total time deposits to total assets at the end of 1952 was 38%, and the proportion of savings passbook accounts to total assets was 26.1%.

Those figures are taken from the reports of the Michigan National Bank.

Mr. Klein: At what period, you say?

A. The end of 1952.

* * * * *

A. These proportions compare respectively with 20.4% and 15.4%, which is estimated on the proportionate basis for all national banks in the United States as of December 31, 1952.

Q. What is a reasonably accurate measure of this so-called competition between national banks and savings and loan associations?

Mr. Klein: What do you mean by measure? What do you mean by that, Mr. Dexter?

Mr. Dexter: In terms of economics that the Professor is referring to.

Q. (By Mr. Dexter): State it another way. What is a reasonably accurate measure of the degree of overlap between national banks and savings and loan associations in their common (1595) activity in the field of real estate loans? Have you prepared any exhibits to illustrate this?

A. I have prepared exhibits to illustrate that point.

* * * * *

Q. Is that illustrated by more than one exhibit you have prepared, Professor Woodworth?

A. I believe I prepared two exhibits that illustrate that point.

Q. I would like to show you an exhibit marked 224 and ask you if that has been prepared by you and whether or not the source of the information is indicated on the exhibit?

A. It was prepared by me, and the sources are indicated on the exhibit.

Q. And is that the same for Exhibit 224-A that I now show you?

(1596) A. That is correct, I prepared Exhibit 224-A and the sources of the information are indicated on the exhibit.

Q. Is that also true for the exhibit marked 224-B?

A. That is correct.

Mr. Klein: Your Honor, on Exhibit 224-A I would like to examine the witness a little.

The Court: All right, sir.

Mr. Klein: You do not, Professor, do you, by Exhibit 224-A show the amount of competition between national

banks and real estate mortgages to savings and loan amounts, do you?

A. I show the proportion.

* * * * * *

A. This exhibit shows the proportion of real estate loans to total assets of all national banks and of all savings and loan associations in the United States on selected dates.

Mr. Klein: Does the bottom column under 2 show the dollar amount?

(1597) A. The dollar amount does not appear.

Mr. Klein: In any place?

A. Not on this exhibit. It is based on dollar amounts, but it is a proportion to show the relative importance of these real estate loans in the business of the two institutions.

Mr. Klein: It is in the proportion of mortgages to assets of the bank?

A. The total assets of the bank.

Mr. Klein: And the percentage or portion of mortgages to assets of the savings?

A. That is right.

Mr. Klein: But it doesn't show the amount of assets or of mortgages of a bank as compared with the amount of mortgages of savings and loan associations?

A. Not directly, no.

* * * * * *

Q. * * * Referring to these exhibits would you indicate what you believe to be the answer to the question posed in regard to an accurate measure of this so-called competitive area?

A. I believe that a reasonably accurate measure of the degree (1598) of competition between national banks and savings and loan associations in the field of

real estate loans is as given in Exhibit 224-A, which shows the proportion of real estate loans to total assets for all national banks and for all savings and loan associations in the United States on various dates. And Exhibit 224-A brings out certain relative points that I should like to call to your attention.

First, that national banks were not importantly engaged in real estate financing until the 1920's. Second, the relative importance of real estate loans of national banks increased between 1930 and 1952 from 5.1% to 7.6% of total assets; and, third, the proportion of residential real estate loans to total assets of national banks was 6% in 1952, compared with a proportion of 81.2% in savings and loan associations.

This comparison brings out sharply the fact that residential mortgage loans represented a small part of the total business of national banks, while they constituted the dominant type of earning asset of savings and loan associations.

It should also be strongly emphasized that the proportion of residential real estate loans to total assets for all national banks in 1952—6% you recall is the ratio—substantially overstates the area in common between national banks and savings and loan associations in the residential loan field.

* * * * *

(1599) This conclusion follows, then, from Exhibit 224-B, which gives a distribution of residential real estate loans for all national banks and for the Michigan National Bank at the end of 1952.

Federal Housing Administration and Veteran's Administration mortgage loans were 61.2% of total residential mortgage loans of all national banks, a field that was a relatively small part of the mortgage loans

of savings and loan associations, which, roughly indicated, was 19.1% of the total amount of loans made in 1952 by the sixteen associations in the Michigan National Bank area, as shown in Exhibit 200-C, which I believe is a part—

Q. (Interposing) You have examined that, have you, not?

(1600) A.. Yes, I have examined that. Conventional loans made up the remaining 38.8 per cent of total residential mortgage loans of national banks in 1952. This compared with a proportion of 80 per cent in conventional mortgage loans made by the above 16 savings and loan associations, as again shown in Exhibit 200-C.

Thus, there was apparent a high degree of specialization in the residential loan field, with the national banks showing great preference for FHA and VA loans, and with savings and loans displaying ever greater preference for conventional type loans. This is understandable, since the national banks prefer the greater liquidity and shiftability which characterize FHA and VA loans. These loans are readily bought and sold in the market. The savings and loan associations, on the other hand, need less liquidity and prefer the higher yields provided by conventional loans.

This division of the field was also in large part a result of the far stricter legal regulations applying to conventional mortgage loans of national banks. It will be recalled that they were not permitted to make such loans in 1952 for a longer period than ten years or for an amount in excess of 60 per cent of the appraised value of the property. These conservative terms did not suit the typical borrower, with the result that he sought more liberal terms elsewhere with savings and loan associations, mutual savings banks, (1601) individuals and others.

* * * * *

(1607) Lansing, Michigan,
Wednesday, October 22, 1958,
9:30 o'clock A. M.

* * * * *

(1608) Q. And have you got any observations that you could make by reference to Exhibit 224-B?

* * * * *

A. If you notice Exhibit 224-B, it will be observed that the Michigan National Bank showed a considerably smaller proportion of conventional mortgage loans in 1952 than all national banks combined, 29.5 per cent compared with 38.8 per cent. Also that Michigan National held an appreciably higher proportion of insured or guaranteed loans, 70.5 per cent compared with 61.2 per cent for all national banks, and with a very high proportion of FHA loans, 52.4 per cent.

In summary, the competition between national banks and savings and loan associations in seeking thrift accounts decreased appreciably between 1930 and 1952, as measured by the proportion of savings pass-book accounts to (1609) total assets of national banks from 20.8 per cent to about 15.4 per cent respectively.

The competition between national banks and savings and loan associations in the real estate loan field in 1952, as measured by the proportion of residential mortgage loans to total assets of national banks, was at most six per cent of total national bank assets. Moreover, this proportion, without doubt, overstates the real area in common, in view of the division of such loans into the categories (a) conventional mortgage loans, which were the forte of savings and loan associations, and (b) guaranteed or insured FHA and VA mortgages, which represented over three-fifths of mortgage loans of national banks, and which were a rela-

tively small part of the mortgage portfolio of savings and loan associations.

It should also be emphasized that, in so far as competition for mortgage loan business between national banks and savings and loan associations increased between 1930 and 1952, it was a consequence of a change in the loan policies of the banks, not of the savings and loan associations. Residential mortgage loans have been the principal asset of the associations from their early beginnings. This remained true in both 1930 and 1952.

Q. Did it remain so in the period in between those dates?

A. It did.

(1610) Q. Now, what was the problem in regard to taxation of national banks that Congress was faced with in enacting Section 5219 of the Revised Statutes?

* * * * *

(1612) A. I must speak completely as an economist, sir, in my interpretations of what the problem was and without any idea of entering into the legal aspects of the problem.

Congress, in my opinion, was concerned with the type of financial business which it provided for national banks to perform in the Act of 1864. This was primarily monetary in character; services in connection with first, providing a safe and uniform currency at par in all parts of the country; (b), providing sound banks to serve as depositories for the federal government and to assist the treasury in fiscal operations; and (c), providing a safe check book money for businesses and the general public.

The need for high liquidity of national banks was recognized in the prohibition of real estate mortgage

loans which was in effect until the Federal Reserve Act of 1913.

Congress in my opinion is concerned with the protection of national banks from discriminatory taxes levied by the separate states in favor of state chartered institutions and private commercial banks performing substantially the same services. The competitive area with (1613) which Congress was most concerned was monetary services as listed above, engaged in at that time by state chartered banks, trust companies, private loan companies and private bankers.

Also Congress was ~~concerned~~ with the making of short-term commercial loans to businesses and individuals. Conversely, Congress was not concerned with, in my opinion, protection of national bank shares against taxation at different rates of the business of other financial institutions engaged in providing non-monetary financial services of an entirely different character, such as the thrift savings function of mutual savings and loan associations and mutual savings banks, in their co-ordinate functions of making long-term real estate mortgage loans.

* * * * *

(1616) Q. * * * Professor Woodworth, in your opinion, is there any similarity in substance between the share accounts of savings and loan associations and the shares of capital stock of national banks?

(1617) A. My answer to that question would be no, there is very little— * * * similarity in substance, and the reason for that would be as follows:

First, the comparable component in the business of savings and loan associations to the capital funds of national banks is not savings share accounts at all, but reserves and undivided profits.

This fact is brought out—I have some information here from an abstract, I believe that—has it been introduced, No. 224?

Q. Yes.

A. Exhibit 224 shows where savings and loan associations, the national banks, and the mutual savings banks got the funds that they administered in their respective businesses at the end of 1952.

Reserves and undivided profits of savings and loan associations represented 7.3 per cent of their total assets, and the capital stock, surplus and undivided profits of national banks represented 6.5 per cent of their total assets, a somewhat smaller proportion.

Savings share accounts of savings and loan associations are comparable as a source of funds with total deposits of national banks, instead of with shares of national (1618) bank stock. Savings share accounts represented 84.7 per cent of total assets of savings and loan associations, and total deposits on national banks represented 91.8 per cent of their total assets on that date.

Comparable ratios for mutual savings banks, which are broadly comparable institutions to savings and loan associations were 91.8 per cent and 89.6 per cent, respectively, and I have developed the close similarity of functions and services of mutual savings banks and savings and loan associations; and may I recapitulate these proportions, just to put them in focus.

Q. I believe that would be proper, Professor Woodworth.

A. The co-ordinate items, as I see it, from an economic standpoint are reserves and undivided profits of the savings and loan associations as applied to total assets were the proportion of 7.3 per cent for total stock surplus and undivided profits to total assets of national banks, which we saw was 6.5 per cent, and

capital accounts to total assets of mutual savings accounts, in which the proportion was 9.8 per cent.

The similarity of those proportions is obvious, the range being from 6.5 per cent to 9.8 per cent.

On the other hand, the co-ordinate items from an economic standpoint, as I see it, for the three types of institutions, savings share accounts to total assets was 84.7 per cent, total deposits to total assets of national (1619) banks was 91.8 per cent, and capital accounts to total assets of mutual savings banks was 89.6 per cent, again a very close similarity in proportions, in the range from 84.7 to 89.6 per cent.

Q. Can this general comparative be illustrated in other ways?

A. Yes. I think I can illustrate it in at least two other ways.

First, the basic comparability of shares of national bank stock with reserves and undivided profits of savings and loan associations can be demonstrated in this first manner. We can say that aside from minor adjustments that total assets less deposits of a national bank equals capital stock, surplus, and undivided profits. It is a sort of an accounting equation and likewise, aside from small adjustments, we can say that total assets less savings share accounts of a savings and loan association equals reserve and undivided profits — another accounting equation which comes out with the idea that capital stock surplus and undivided profits are comparable to reserves and undivided profits of the savings and loan associations.

Thus, you see that both capital, surplus and undivided profits of a national bank and reserves and undivided profits of a savings and loan association represent protective funds of value to customers who have entrusted funds to their institution—to either institution.

If asset values of either institution decline well (1620) below the amount of customer accounts so that liquidation is necessary, all that depositors or savings shareholders can get is their proportionate share of the net amount realized from asset liquidation, disregarding, of course, the insurance of deposits and share accounts.

Thus, there is a basic similarity between capital surplus and undivided profits of a national bank and the reserves and undivided profits of a savings and loan association, and if I may pursue another method—

Q. Another method of comparison, yes.

A. I prepared an illustration of this by means of simplified statements of national bank "X" and savings and loan "Y".

Q. Professor Woodworth, I believe I have a copy of that and I would like to have it marked as an exhibit, and then you can develop that illustration from it as an exhibit.

(Whereupon a document entitled, "National Bank X" was marked as Exhibit 225 for identification by the reporter.)

A. Exhibit No. 225, is it, sir?

Q. That is correct. Professor Woodworth, I hand you an exhibit marked 225 and ask you if that is just a table illustrating one of these comparatives which you wish to testify in reference to?

A. That is correct.

* * * * *

(1621) Q. * * * Professor Woodworth, can you just generally describe Exhibit No. 225?

A. Exhibit No. 225 is designed to place the assets and liabilities items of the national bank and the assets and liabilities items of a savings and loan association

before us in simplified form, and purely a hypothetical illustration to bring out a point that I wish to make in my testimony.

Q. And does that hypothetical illustration generally compare with the actual figures for these institutions?

A. Yes. The relationships on this statement, percentage relationship of each item to the total assets or liabilities could be a national bank or could be a savings and loan association relationship.

Q. And you have previously testified to those exact relationships?

(1622) A. That is correct.

Q. And this is an illustration of another comparison you think is proper between these two institutions?

A. Yes.

The Court: Just be a little more specific. It is not plain that these percentages necessarily represent the Michigan National Bank.

A. That is right.

Mr. Dexter: That is right, nor any bank.

A. As a matter of fact, your Honor, the percentages, your Honor, on here have no relation to the point that I am going to make.

The Court: Do they have any relationship to the testimony given with reference to all of the national banks in the United States? Have you got some tables on that?

A. No.

Mr. Klein: I object to the admissibility of it. * * *

* * * * *

Mr. Dexter: This is just an aid. I want it admitted as an aid.

(1623) The Court: It may be considered as an aid. I won't go so far as to call it evidence. * * *

* * * * *

A. (Interposing) There is no need, sir, to repeat the data in the exhibit as such: Copies are available to you.

Q. That is right.

A. If you will refer to Exhibit No. 225 now, assume that savings and loan "Y" is offered for sale to a private group under the condition that the savings share accounts will be recognized as deposits dollar for dollar; also, assume that the stated asset values represent fair market values. Under these assumptions, the private group would be justified in making an offer of about $100; the excess of asset values over the amount of savings share accounts.

Next, assume that National Bank X is offered for sale. A private group would likewise be justified in offering about $100—the excess of asset values over the amount of deposits.

After the sales, the two institutions could go on operating substantially as before, except that interest would be paid to depositors in the new stock savings bank instead of the former dividend on savings share accounts in the savings and loan association Y.

Q. Now, could you state in your opinion what are some of the basic (1624) differences between national bank stock and savings and loan share accounts?

A. Savings share accounts are unlike shares of national bank stock in that they represent a small personal indirect investment in the mortgage portfolio and other assets of a savings and loan association with no prospect of appreciation in value of the principal.

In contrast, share of national bank stock represent a risk-taking venture, motivated by the expectation of making a business profit. If successful, the owner of the national bank shares may realize not only current

cash dividends, but large appreciation in value per share.

For example, the investor who bought 100 shares of stock in the Michigan National Bank in 1941 for $1,700, as noted, according to the record, at $17 per share, received a cash dividend in each year through 1952.

In addition, he received 2.33 shares of stock dividends during this period, so that he had 333 shares in 1952. These shares were quoted at $34 to $36 a share in 1952, so that using $35 as the mean of those two figures, the value of the principal had risen from $1,700 to about $11,655, an appreciation of $9,955, or 586 per cent.

Q. Contrast this with a savings and loan share account investment.

A. Right along a little further, this example that I have just (1625) cited of large appreciation in the value of national bank shares suggests another difference between these shares and savings share accounts.

The large increase in net profit per share of Michigan National Bank was possible because for each dollar of capital stock, surplus, and undivided profits the bank had approximately $20 of assets, the bulk of which was represented by debt to depositors.

This is what is often called "trading on the equity." Savings share accounts cannot be used to trade on the equity in this manner. At the end of 1952, total savings share accounts were 84.7 per cent of total assets of all savings and loan associations in the United States, as shown by Exhibit 224.

On the same date, the proportion of capital stock, surplus, and undivided profits to total assets of all national banks was 6.4 per cent, and this proportion in Michigan National Bank was 4.8 per cent.

And third, I would point out that savings accounts or share accounts of savings and loan associations are un-

like shares of national bank stock in that these accounts are always open to receive small additional amounts from savings customers and the associations stand ready to return these dollars and no more to customers on request on (1626) thirty days' notice, and usually on demand, in fact. This permits the general public always to participate on equal terms with existing share account holders.

Not so with shares of a national bank. The number of such shares is fixed for long periods, and is changed only after formal approval by a vote of the stockholders. The owner of national bank shares cannot turn them in to the bank for redemption at a fixed value. He can convert them into cash only by sale, usually through a security dealer, in the over-the-counter market, such shares not being listed on organized stock exchanges.

In contrast again, savings share accounts are not bought and sold in the market at varying prices. The amount and value in one's account remains the same except as increased by additions from savings or as reduced by withdrawals, except in the unlikely contingency of liquidation of a solvent association.

Fourth, most savings and loan share accounts are insured by the Federal Savings and Loan Insurance Corporation. Unlike this, national bank shares of stock are not insured; in fact, were subject to double liability up to July 1, 1937, following an amendment to the National Bank Act in 1935. It is the deposits of national banks that are insured by the Federal Deposit Insurance Corporation.

Thus, the basic comparability of savings share (1627) accounts and deposits which I have just established were recognized by Congress in its legislation to protect owners of savings share accounts and owners of deposits.

I was also somewhat surprised to see Exhibit 217, entitled "Facts About the Difference Between Banks and Savings and Loan Associations," the exhibit which I had seen for the first time myself last Monday, that Michigan National Bank and the Michigan Bankers Association have gone to considerable pains to separate two things which we are talking about here—that is, the savings share accounts and time deposits—and these two things the public regards as competitive and similar for all practical purposes, thereby expressing the purpose of this exhibit to allay the confusion that the average man in the street has between savings share accounts and deposits of banks.

Mr. Klein: I move that that last be stricken, as the exhibit speaks for itself, and the comments of the Professor, advocating the cause of the defendant, as to what an exhibit means are hardly in order as opinion evidence. I move that it be stricken.

Mr. Dexter: I think, your Honor, he referred to it as another illustration of this overall comparison.

The Court: In so far as it attempts to state what was in the minds of the bankers preparing this exhibit, I grant the motion to strike it.

(1628) A. There is nothing in the exhibit, if I may add one other point, that expressed any similarity between national bank shares and savings and loan shares.

Q. (By Mr. Dexter): Now, Professor Woodworth, in your opinion, was money invested in share accounts of savings and loan associations in 1952 in competition with the business of national banks within the meaning of Section 5219 of the Revised Statutes?

Mr. Klein: I object to the qestion. That calls for a legal conclusion, and I certainly don't think—that is for

the Court to decide, and not for this witness to comment on. He is asking him his opinion on how it applies to a legal statute, the statute that is before the Court.

Mr. Dexter: Your Honor, we would direct the Court's attention to the fact, I believe, that this question is a mixed question of law and fact, by previous rulings of this court, and obviously we direct our question to the witness in terms of the factual aspect of the question.

The Court: Well, are we all going to be talking about the same thing, though, when we talk about competition? You haven't defined "competition" in the terms of this question, at least, what you mean by it. You might mean one thing, and the Professor might mean another, and I might still mean a third, and the Supreme Court of the United States may mean a fourth, when you get there.

(1629) So it seems to me that I do have the problem, as in the opinion you handed up yesterday, you pointed out that the Michigan Supreme Court, in modifying the court rule, hase permitted opinion evidence, at least in the discretion of the court, with respect to the ultimate question to be decided.

This, however, is not entirely one of fact. It is one of law. And if we are going to reduce it to one of fact in some manner or other, or are going to be able to at least, you have got to define competition so we are all talking about the same thing.

I think if that is done, I will permit the question, recognizing the difficulty of the witness testifying on something that involves not only fact, but also questions of law. But, nevertheless, I will permit it.

* * * * * * *

(1630) Q. (By Mr. Dexter): I will ask you the question, Professor Woodworth, was money invested in share accounts of savings and loan associations in 1952 in competition with the business of national banks in the meaning of Section 5219?

The Court: Well, right there and now, Mr. Dexter, is that under any theory of the question here—is it in competition with business of national banks or is it in competition with money invested in the shares of national bank stocks? Which is the issue here?

* * * * *

Q. (By Mr. Dexter): In that question by the word "competition," Professor Woodworth, is meant the extent to which the two institutions, that is the national banks and savings and loan associations are operated in the same areas or fields of (1631) financial business?

* * * * *

(1632) A. In the light of the facts that I developed in my previous testimony, my answer would be no.

First, the business of national banks in 1952 was predominantly in the monetary field; that is, as creditors, holders, transferers and lenders of money;

Second, the business of savings and loan associations was predominantly in the field of gathering together thrift savings and lending these accrued savings for home ownership on the basis of long-term residential mortgages;

Third, the purposes and functions of these two institutions were too different and the area of comon operations was too narrow to constitute substantial competition in an economic sense.

Passbook savings accounts of national banks were about 15 per cent of their total assets in 1952. Residential real estate loans of the national banks were 6 per cent of their total assets in 1952.

Moreover, the fact that each institution specialized to a high degree in different types of loans in the residential loan field narrowed even further the area of real competition.

Over three-fifths of residential mortgage loans of national banks at the end of 1952 were guaranteed or insured (1633) by FHA and VA. Less than two-fifths were conventional mortgage loans.

In contrast, only about one-fifth of residential mortgage loans of savings and loan association were FHA and VA mortgages, the remaining four-fifths were conventional mortgages, almost all of which were made with a longer maturity or were for a larger amount than permitted by law to national banks.

Attention should also be called to the fact that the scope of competitive operation is much narrower in the field of FHA and VA mortgage loans than in the area of conventional mortgage loans.

This follows from the fact that government regulations require uniformity in rates, maturities, bases of appraisal, home specifications, and in other respects.

It is also relevant that the overall competition of savings and loan associations with national banks in the State of Michigan was substantially less than in the United States as a whole.

For example, the United States Savings and Loan League fact book for 1954 reports, on page 33, that home mortgage recordings of ~~all~~ savings and loans in Michigan in 1952 were 149 million 964 thousand dollars, compared with total home mortgage recordings in Michigan for all lenders of 616 million 749 thousand dollars, a proportion of 24.3 (1634) per cent.

In the entire United States the comparable proportion was 35.8 per cent.

The figures from which these were computed were 6 billion 452 million 357 thousand for savings and loan associations, and a total of home mortgage recordings in the United States of 18 billion 17 million 677 thousand.

The proportion in Ohio was 57.2 per cent, the relation between 882 million 162 thousand and 1 billion 542 million 352 thousand.

In Illinois the proportion was 52.6 per cent, the relation between 556 million 280 thousand and 1 billion and 57 million 594 thousand.

And in Indiana the proportion was 46.4 per cent, the relation between 203 million 381 thousand and 438 million 114 thousand. That is compared with 24.30 per cent in Michigan.

* * * * * *

(1640) Q. * * * Professor Woodworth, was there actual discrimination in an economic sense against national banks (1641) as compared with savings and loan associations by the tax structure of the State of Michigan in 1952?

Mr. Klein: I object to the question, sir; * * *

The Court: I shall permit the answer for the reason that it is entirely possible when this case gets to the appellate court; they are going to say—which I don't think they have said up to this point, although I am still not deciding the legal problems yet—until I have read all of the cases and re-read them again that whether or not there is actual discrimination depends upon economic principles rather than what they have said about legal principles up to this time. It is entirely possible that they will say that when it gets there and I shall permit you to put this in as substantiating your theory, and, of course, subject to the objection that counsel has made.

A. I would say that there does not appear to have been a (1642) significant difference between the Michigan tax burden on national banks and savings and loan

associations in 1952. * * * I will first consider the intangibles tax on bank shares compared with the franchise tax on savings and loan associations.

(1643) Q. Do you have an exhibit to illustrate this comparison?

A. Yes, I have prepared such an exhibit, Mr. Dexter.

Q. I show you an exhibit marked 226 and ask you if that is that exhibit.

A. That is correct.

Q. Does it indicate the source of statistical information?

A. It does.

Mr. Dexter: Your Honor, I would like to offer Exhibit 226 as part of the testimony of Professor Woodworth in his explanation of his testimony.

Mr. Klein: Your Honor, I object to Exhibit 226 because it is a comparison on the gross assets of a bank with the gross accounts of savings and loan before deduction of liabilities, and the Supreme Court of the United States in the Minnesota case says this very type of comparison is not valid, and ruled against the State of Minnesota on this very type of presentation.

The Court: That is, I believe, a fair statement of what the Supreme Court has done up to this time, and we can get down to my decision in this case and discuss whether I am bound by that decision and the construction that you give to it. But the Supreme Court has changed its mind on many things, and based their decision sometimes on sociology, other times on economics.

(1644) I have no reason to be sure that the last word has been said on this subject, and I don't know whether counsel can present this matter except to make a record. You can make it by way of an offer or you can dictate the offer upon the record, but it seems to me that the Supreme Court would be in a much better position to

fairly consider the defendant's theory as well as the plaintiff's and what the Court has said in previous cases if it has testimony as it comes form the mouth of the witness.

I think this exhibit is subject to exactly the same objection that the previous question was and that the ruling will be the same.

You may proceed without any determination that I am going to follow that theory when it comes to deciding the case. I will reserve decision on that until later on.

A. I should say the fairness of the Michigan intangibles tax on national bank shares and the franchise tax on savings and loan associations can best be charged on a state-wide basis.

Exhibit 226 which you have shows that the five and a half mills tax applied to capital, surplus and undivided profits of all national banks in Michigan as of December 31, 1952, would have been $916,982, which was .0245% of their total assets.

It also shows that the one-fourth mill franchise tax applied to the sum of reserves in savings share accounts (1645) of all state chartered savings and loan associations, 36 in all in Michigan, as of June 30, 1952, would have been .02243% of their total assets.

The difference in the rates on total assets is insignificant, for all practical purposes.

An examination of Exhibit 213, which I believe is in the record * * * indicates that there was no significant difference between the total state tax burden on the Michigan National Bank and the sixteen savings and loan associations in its trade area.

For example, the total state ~~and local~~ taxes of Michigan National Bank amounted to 9.1% of its total assets in 1952. The same *ratio* for the sixteen savings and loans was 8.9%.

The Court: Is that a correct reading of the percentage, or am I in hundreds of per cent? Here you have got ratio of six. Here you have 600.

* * * * *

A. This is 600. I said in per cent, sir.

Q. (By Mr. Dexter): You were wrong, then?

A. I was wrong. I said it is stated in per cent instead of ratio.

Mr. Klein: You Honor, on this exhibit, just so we don't get off the subject, may I ask two questions on (1646) Exhibit 226 the witness is now testifying about, just so we don't get off the track. * * * Does the assets in 226 of national banks, are they gross assets before deducting the deposit and any other liability of the bank?

A. They are, sir.

(1647) Mr. Klein: And the same is true of the savings and loan assoications?

A. That's right.

* * * * *

A. Referring again to Exhibit 213, if the comparison is made on the basis of the franchise and intangibles taxes paid, there again was not a significant difference. For Michigan National Bank, these taxes were 5.5 per cent, or a little—

Mr. Klein (interposing): Your Honor, may I interrupt? I object to this whole line of the testimony because it is an asset comparison, or comparison of the income.

The Court: Yes. All this testimony following the question that was specifically objected to and upon which I gave a ruling, all the testimony comes in the same class and is subject to the same objection and is admitted under the same ruling.

Mr. Klein: Thank you, sir.

A. These taxes were a ratio of .055 to total assets, as compared with a ratio of .053 for the ten state chartered savings and (1648) loan associations. The six Federal associations were taxed on a different basis in 1952, but if the same rates are applied to them, the overall ratio would be approximately the same as for Michigan National Bank, according to Mr. Carlson's testimony.

Q. (By Mr. Dexter): Now, would you state, in order that it might be very clear, the ratios in reference to the total taxes on the Michigan National Bank on Exhibit 213: Did you say 9.1 per cent?

A. I stated it in terms of percentage, but I would be glad to state it in ratios as it is from the account here. That should be corrected, if you wish to put it in ratios, to .091 compared with .089.

* * * * *

(1652) Q. * * * Do you have and did you prepare other statistics for purposes of comparison of the tax burden between (1653) these two institutions?

* * * * *

A. Yes. In developing this analysis, in my own mind I considered four different bases by which these two institutions might be compared for state tax purposes.

Mr. Klein: These two—you mean the national banks or do you mean the Michigan National Bank?

A. I mean the national banks. * * * In general.

Mr. Klein: I have an objection on this whole line of inquiry.

The Court: It may be received on the basis that the preceding testimony was received.

Mr. Klein: Thank you, sir.

A. The first was capital, surplus and undivided profits of national banks compared with savings share accounts of savings and loan associations. The second was

capital, surplus and undivided profits of national banks compared with reserves and undivided profits of savings and loan associations. The third was net profit before Federal income taxes (1654) of national banks, compared with adjusted net profit of savings and loan associations. The fourth was total assets of national banks compared with total assets of savings and loan associations.

* * * * *

Mr. Klein: What do you mean by "adjusted," sir?

A. I shall define that, sir. * * * With respect to number one, in the light of the facts developed in my preceding testimony, capital, surplus and undivided profits to savings share accounts is completely absurd. It ignores the economic realities of the businesses of the two institutions and rests on the superficiality that savings and loan share account is legally an equity rather than a deposit debt and being an equity share is comparable to shares of national bank stock. The flagrant injustice of this basis is brought out sharply by the facts already cited that the proportion of capital, surplus and undivided profits to total assets of all national banks at the end of 1952 was 6.5 per cent. This ratio for Michigan National was 4.8 per cent. On the same date, the proportion (1655) of savings share accounts to total assets of all savings and loan associations was 84.7 per cent. Thus to apply the same tax rate to savings share accounts of the associations that is applied to capital stock, surplus and undivided profits of national banks would be tantamount to taxing the total assets of savings and loan associations at a rate thirteen times higher than the total assets of national banks. That is the relation between 84.7 and 6.5 per cent. In the case of Michigan National Bank, the total assets of the associations would be taxed 17.6 times higher; that is the ratio between the 84.7 and 4.8.

The second basis of comparison, capital, surplus and undivided profits of national banks to reserves and undivided profits of savings and loan associations is reasonably equitable and is also administratively practicable. As already developed in detail, these two items are comparable in that they represent the fund of asset values in excess of deposits and other debts in the case of national banks—

* * * * *

(1656) Q. * * * These were comparisons that you have taken into consideration in arriving at your conclusion in regard to 226?

A. That is correct.

Q. You are not trying to say legally what savings and loan share account is?

A. No.

Q. You are speaking purely in reference to economic comparisons?

A. I am trying to show my reasons as a basis for selection of the basis of comparison that I used and selected to judge whether or not there was discrimination against national banks (1657) or against savings and loan associations for that matter in the Michigan tax structure and judging by Exhibit 226.

Q. You would offer this in support of your * * * conclusion testimony as to 226?

The Court: For that purpose, it is permitted.

* * * * *

A. Starting with the last sentence as already developed in detail, these two items are comparable in that they represent the fund of asset values in excess of deposits and other debts in the case of national banks, and in excess of savings share accounts and debts in the case of associations. In other words, these funds in

both cases constitute the protection against loss provided for depositors in the one case and for savings share accounts in the other.

However, this basis has the drawback of giving tax preference to institutions with weakest capital structures and thereby encouraging a minimum of protective capital funds.

Q. For that reason, you did not believe it to be a proper comparison?

A. That is correct. This is not equitable to the stronger institutions nor is it good public policy for that matter to place a penalty on safety and a premium on weakness. So I rejected that in my thinking as a proper basis of comparison.

(1658) Third, a strong case can be made on logical grounds for the comparative basis, net profit before Federal income taxes of national banks to adjusted net profit of savings and loan associations. Net profit is a better measure of the ability to pay taxes than assets; valued on some rather arbitrary basis assets that have little or no earning power cannot justifiably be taxed at the same rate as assets that have large earning power, but there are serious practical limitations on the net profit basis arising from the large differences in organization and method of profit determination of the two institutions.

It would not be equitable to use net profits before dividends to share accounts as the basis for savings and loan associations since national banks deduct interest on time deposits as an expense in the determination of their net profit, neither would it be fair to national banks for savings and loans to use net profits after dividends to share accounts as the basis.

By raising the dividend rate, the associations could reduce their tax base to a minimum.

(1659) Also, the effect would tend to weaken their reserves and undivided profits, and thereby weaken the safety of the savings share accounts.

If the net profit basis of comparison were used, it would be necessary to define adjusted net profit of savings and loan associations for state tax purposes. This could be done equitably by defining adjusted net profit as net profit before dividends to share accounts less an expense allowance equal to the average rate paid in the tax year on time and savings deposits by national and state chartered banks in Michigan times the average amount of savings share accounts in a savings and loan association.

Q. What did you find to be, then, the most practical basis of comparison?

A. Well, I found the most practical basis as I worked on this to be total assets to total assets.

Q. And that is the basis that you have testified to in Exhibit 226?

A. That is the basis I testified to in 226, and this basis has the advantage of both a reasonable degree of equity and of administrative simplicity.

Total assets represent the principal basis of earning power and the opportunity to realize earnings in both institutions.

In view of the unlike character of their businesses, (1660) organizations and operations, the amount of total assets is doubtless as equitable a common denominator for tax purposes as can be developed, in my opinion.

Q. Professor Woodworth, based upon your examination of data to which you have made reference in your testimony and knowledge of the savings and loan asso-

ciations, have savings and loan associations changed their business character or practices since 1933?

A. I would say not in any substantial way.

* * * * *

(1661) *Cross Examination*

By Mr. Klein:

Mr. Klein: Reserving my objections, of course, your Honor, throughout.

* * * * *

(1664) Q. * * * Do you believe that a proper basis of comparison of tax burden, a tax against the shares of a national bank and those of a building and loan association, should be by taking the tax burden of the state in relation to the assets of the bank without deducting liabilities as compared with the assets of the building and savings and loan associations without deducting liabilities? Is that correct, sir?

A. That is correct.

Q. And you also expressed the opinion, did you not, that it would not be economically sound to compare a tax on the share or equity account of a bank as compared with the share account of a savings and loan association because savings and loan associations in some respects have different activities and different functions than the banks?

A. I didn't state it in those terms.

Q. How did you state it, sir?

A. I stated that it was inequitable to apply the same tax rate to the capital stock, surplus and undivided profits of a national bank and to the capital, savings capital, shares of savings (1665) and loan associations, that those two items are not comparable from a practical business operations standpoint.

Q. Didn't you also talk about unlike character of the business?

A. That has very little consideration in my standpoint in this answer.

Q. You did so testify.

A. They do have very different functions, true.

Q. And that is one of the reasons why you like to make a different tax approach, isn't that so, sir?

A. No, I do not think so.

Q. You don't think unlike characteristics has anything to do with this question, then?

A. I think unlike characteristics have something to do with my answer, yes.

Q. What do you have to do with it?

A. My answer is based on the fact that we have the practical problem of taxing, the state, two financial institutions: one of them is a national bank; the other is a savings and loan association. Their operations are, to be sure, very different. They have some things in common, but basically they are quite different.

That means that from the standpoint of justice and equity we need to pick out some basis that will more or less overlook these differences and put it in terms of, perhaps, as (1666) I mentioned in my testimony, total assets of the one compared to total assets of the other. That is what each of them works with in the beginning. Those are in dollars they are equal, they are fungible. One can use them one way, the other another. They are no more different in that sense than comparing the business of a farmer with the business of a merchant in the city.

They both are operating with so many dollars. That is a simple basis. And I would say one reason that I prefer that basis is this unlike character of their operations. Dollars are dollars, but the activities of the

savings and loan associations are one thing—you might call that an apple—and the activities of the national banks might be a coconut.

(1667) Q. Well, you did say they have certain activities in common, didn't you, sir?

A. That's right.

Q. And the mortgage business activities are those in common, aren't they?

A. One of the activities in common.

Q. In fact, that is the principal use of funds of a building and savings and loan association, to invest in mortgages, is it not?

A. That is correct.

Q. And mainly, not altogether, in residential property; isn't that correct, sir?

A. Mainly in residential property.

Q. Yes. And isn't it a fact that savings and loan associations attempt to get borrowers on residential property from every class and strata of society, so long as the property has value to back up the loan and the credit of the borrower is sound?

A. Yes.

Q. Regardless of whether he is a college professor, a lawyer, a judge or a workman in the factory; isn't that true, sir?

A. I would say so.

Q. And they appeal to that type of borrower, do they not, sir?

A. Not to the last name mentioned. They appeal to any borrower, as you said in the beginning, that wants to build a home.

Q. Any borrower who wants to build a home or own a home; isn't (1668) that correct? They don't turn down people who buy homes that are already built, do they?

Q. No. They appeal to borrowers who want to either build or own a home; isn't that correct?

A. They appeal to them and to others.

Q. And to others. In other words, the savings and loan association seeks out as its customers, borrowing customers, borrowers from every economic strata in society, so long as his property has the value to back up the loan and he has financial ability, at least the savings and loan thinks, to pay for it?

A. I will say that the savings and loan associations are glad to accept loans from any class of borrowers who come within the limits of their lending ability, whether they are high income groups or low income groups, but the fact is that most of the loans are made to low and middle income group people.

Q. Well, isn't it a fact that the borrowers of savings and loans for residential property are about the same class of borrowers who borrow on residential properties from commercial banks in the same area?

A. In general, yes.

Q. And in your opinion, does it make any difference to the borrower whether he borrows from a savings and loan association or from a commercial bank, so long as he gets the money he wants and the terms are competitive?

(1669) A. No.

* * * * *

Q. * * * The answer is no, it doesn't make any difference, does it?

A. Under your conditions that he gets what he wants.

Q. And he doesn't care whether he goes to one institution or another, so long as he gets the kind of mortgage he is after on the best terms he can get it for?

A. That's right.

Q. Isn't that correct?

A. That's correct.

Q. Now, while we are talking about that, isn't it true that the savings and loan associations who have capital to invest or money to invest try to make as much on their mortgages as they reasonably can in the competitive market?

A. Yes, that's true.

Q. And isn't the same true of commercial banks making loans on the same types of residential properties?

A. That is true; competitors.

Q. They are both competitors for mortgages, aren't they?

A. That's right.

Q. In other words, the commercial banks making mortgage loans on residential property compete with the savings and loans in that area and vice versa, don't they?

A. That's correct.

* * * * * *

(1670) Q. (By Mr. Klein): In your opinion, sir, is there any difference to the borrower on a residential piece of property, within the dollar limits we are talking about on residential property made by the savings and loan associations, whether or not he gets an FHA loan or a conventional loan?

* * * * *

(1671) A. Yes, there is a difference to the borrower whether he gets an FHA or conventional loan.

Q. * * * Why? What is the difference?

A. The difference would be a questeion of whether the terms of the one are more favorable to his needs as compared to the terms of the other.

Q. All right. Following that line of thought, FHA loans are for 20 or 25 years, are they not?

A. They are made for that long period of time.

Q. And the interest rate is about 4 to 4½ per cent, is it not? In '52 I am talking about.

A. In '52 I believe that was the rate.

Q. And then there was an insurance amount they had to pay over and above that 4 per cent of a half a per cent, I believe; isn't that correct?

A. That is correct, I believe.

Q. And conventional loans at that time were about eleven to twelve or thirteen years by savings and loan associations, were they not?

A. I cannot answer that.

(1672) Q. Don't you know from your study, sir?

A. I can say that the original maturities of individual loans must have been as much as twenty years at that time.

Q. Conventionals? Well, if the testimony in this case shows that they varied from eleven to twelve and thirteen years in this area competing with the Michigan National Bank, the borrower would be more interested in getting a longer term FHA for twenty or twenty-five years than the eleven to twelve or thirteen years, would he not?

A. Not necessarily.

Q. That would be a factor though, would it not?

A. In some cases, where a man hasn't much of a down payment that can be made.

Q. In other words, if he has an FHA loan, he doesn't have to make as big a down payment, does he?

A. That is correct.

Q. So it is more advantageous if he doesn't have the money and wants to make a small down payment to get an FHA loan, isn't it, sir?

A. That is the only kind of loan he could probably get.

Q. Yes. And the interest rate on an FHA loan was lower than the conventional loans in 1952, was it not?

A. I don't know about that.

Q. You don't know?

A. No.

(1673) Q. If the testimony shows that it was a half to one per cent difference, an FHA loan, the borrower would have that advantage too, would he not, sir?

A. In the hypothetical case that you have stated, if he has a lower interest rate, he would have that advantage, but I am not testifying to the fact that the rate was lower.

Q. No, I am not asking you to testify to the fact.

A. And I would also like to make it clear I am talking about the cost to the borrower, not what the bank gets out of it.

Q. Yes, sir. We understand each other perfectly. And in your opinion, sir, would it not be more inducive and conducive to home ownership by the borrower if he could borrow money at lower rates or longer terms and with a lower ratio of loan to appraised value; wouldn't that be more conducive to home ownership than a conventional loan at a shorter term and a higher rate of interest?

A. There isn't much home ownership involved, sir, in FHA loans.

Mr. Klein: Would you read the question; and answer the question, sir.

(The question was read by the reporter.)

Mr. Klein: I misspoke. It should be higher ratio of borrowing to appraised value.

A. With that correction, I will answer the question yes.

Q. (By Mr. Klein): In other words, that would be conducive to more home ownership, the better and easier terms he gets?

(1674) A. If you will permit me to qualify slightly.

Q. Surely.

A. We are speaking of temporary home ownership, not necessarily ownership over a decade, because the very small equity in FHA and VA loans might conceivably lead to many foreclosures and not home ownership that we are particularly desirous of developing and home ownership that would not necessarily be of a permanent character.

Q. Well, Professor, wasn't it the purpose of the Federal Housing Administration law to make it possible for more people to buy or build their own homes on easier and longer terms of payment? Wasn't that the purpose of the law?

A. I would say yes to that. That was one of the purposes.

Q. In fact, just yesterday or the day before, there was a further relaxation of the requirements, wasn't there?

A. I don't know.

Q. You don't know. Well, sir, and the same is true with the VA loans; they are long-term loans, aren't they, sir?

A. That's right.

Q. And the interest rate is low, isn't it?

A. That's right.

* * * * *

(1675) Q. * * * Is it not true, Professor, that in 1952—and this is an opinion I want, your opinion—that the savings and loan associations issued more or made more conventional loans than FHA and Veterans loans

because they could earn a higher rate of return on the conventional loan than they could on the FHA loan and thus make more money for their shareholders?

A. That was one of the reasons.

Q. That was one of the reasons, wasn't it?

Now, let's get over to the shareholder situation, sir. I believe you testified yesterday that shareholders in a national bank and shareholders in a savings and loan association both had in mind operating their respective businesses for profit. Isn't that correct, sir? They intended to make a profit on the business activities of their respective organizations?

A. Not using profit in the same sense of the word in the two cases, the organizations are so different that it is very difficult to answer that question.

(1676) Q. Well, let us get into that, sir. Is it not true in your opinion that savings and loan associations in 1952 attempted to get as many share investors as they could?

A. I would assume so.

Q. And is it not true that in 1952, commercial banks attempted to get as many savings, time or book savings accounts as they could?

A. I would assume so.

Q. And is it not true, sir, in your opinion that the rate of return paid upon the shares of savings and loan was an important factor in getting that savings account as compared with what rate of return that investors might get from other sources?

A. One of the factors.

Q. Wasn't it the most important factor?

A. I wouldn't say that it was the most important factor.

Q. It was an important fatcor?

A. An important factor.

Q. Yes. And isn't it true that the savings and loan share accounts grew enormously between the periods from 1935 to 1952 in volume and in number?

A. They grew rapidly.

Q. Very rapidly, didn't they?

A. Not continuously from 1935; it went down during the war and they came up since the second World War.

(1677) Q. And their growth in amount and number has outstripped the growth and number and amount of savings, time savings deposits in commercial, national banks, hasn't it?

A. That is true.

Q. Very much so, hasn't it?

A. Appreciably greater growth, although the last year, I don't think you find very much difference.

Q. And isn't it true in respect to mortgages that the number and amount of residential mortgages, of savings and loan associations grew enormously during that period I described to '52?

A. That is correct.

Q. Very enormously, haven't they?

A. I don't like the word "very."

Q. Well, isn't it true today, sir, that as of today, according to your own statistics that one out of every three residential mortgages on residential property is owned by a savings and loan association in the United States?

A. I have no statistics that give the number in terms of the number of loans.

Q. Well, percentage-wise, in amount, dollar-wise?

A. I think I gave the figure for the State of Michigan for 1952, if I remember the figure correctly, the savings and loan associations were responsible for 24 approximate per cent of the home mortgage recordings.

(1678) Q. And you have quoted from a Fact Book of the United States Savings and Loan League and if their record shows one out of three, you would be inclined to believe that is a correct statement, wouldn't you?

A. I have no reason to believe that it was not.

Q. You don't know?

A. I don't know.

Q. But there has been a tremendous growth?

A. Yes, there has been a rapid growth.

Q. And hasn't that growth in the mortgage field outstripped the growth of national banks generally?

A. In the mortgage field?

Q. Yes, in that same period.

A. I am not at all sure about it.

Q. You are not sure?

A. They have both grown very rapidly in the mortgage field, since the war?

Q. Yes, now, let us stick to the mortgage field. I think you testified, Professor, that since 1917, I believe it was, or '16, Congress of the United States has seen fit to liberalize the mortgage operations of national banks by permitting them to loan money for longer terms, isn't that correct?

A. That is correct.

Q. And then, that was originally in 1917 they could loan for (1679) what, a month?

A. No, it wasn't that soon.

Q. It was in '27?

A. 1916, they were able to loan for one year, the first time.

Q. I see. For the first time.

A. In 1927, they were able to loan for five years.

Q. And then, when was the law put in permitting them to loan for ten years?

A. That was along in 1934, '35; I can't recall.

Q. Yes. I think our records show August 23, 1935, and that permitted national banks which previously had not been permitted to make any mortgage loans on residences, to loan for a ten-year period an amount equal to not more than sixty per cent of the appraised value, so long as forty per cent of the loan was amortized in ten years.

A. That is correct.

Q. And you knew, of course, that the bank at the end of the ten years could then extend the loan for another ten years, couldn't it, the balance?

A. Yes.

Q. And then, the law again was liberalized by the Federal Housing Administration law, was it not?

A. That is correct.

Q. When was that passed, sir?

(1680) A. 1934, I believe.

Q. And that permitted national banks to loan for a period up to twenty-five years, did it not?

A. Yes.

Q. And at what rate of loan to appraised value of property?

A. That ratio has been changed from time to time, but as I recall, for a very low cost housing, it went up to ninety per cent.

Q. Up to ninety per cent; and what other changes have there been in the laws liberalizing the right of national banks to make loans on residential properties? There was a Veteran's Law, wasn't there?

A. That is correct.

Q. When was that passed, sir?

A. I believe it was 1944, in that vicinity; in '44 or '45, the readjustment service act, I believe it was called.

Q. And then, is it not true, sir, since August 17, on August 17, 1954, the law on conventional mortgages was liberalized permitting not only the ten-year loan but a loan on an appraised value of sixty-six and two-thirds per cent of the appraised value?

A. That does not apply to the period of this case.

Q. No, it does not, but you have testified and your exhibits go to 1957?

A. That is correct.

(1681) Q. That is correct and subsequently, they have passed the law, Congress has, now permitting national banks to loan on conventional mortgages for a twenty year period and a sixty-six and two-thirds of appraised value?

A. That is correct.

Q. So is it not your opinion, sir, that since at least 1927 to date the permissive fields of activity of national banks in making loans on residential properties has been enormously changed from almost zero to now a very long term under FHA and VA and a pretty long term on conventional loans.

* * * * *

A. There has been a very large increase and liberalization of the national banks.

Q. And there has also been, has there not, a very large increase in actual mortgage lending on residential property by national banks from '27 through the '52 period?

A. That is true.

(1682) Q. There has been an enormous growth too, hasn't there, in that field?

A. There has been a large growth.

Q. And is it not true that in the State of Michigan for 1952, there was a growth—that there was about $369

million of real estate loans on residential properties by all Michigan banks—by all national banks in Michigan?

A. I would have to consult the records in order to answer that. I can't answer a question of that sort.

Q. You will agree, will you not, Professor, that the mortgage lending activities of national banks in 1952 were a very substantial part of such banks' lending activities?

A. I would not say substantial part of their total lending activities. I would include investments as well.

Q. No. I am talking about loans for the minute. Let us talk about loans.

A. A sizeable part of their total loans.

* * * * *

(1683) Q. Did you know, or do you know, Professor, that as at December 31, 1952, in the State of Michigan that of all of the loan accounts of national banks operating in the states that approximately one-third was loans secured by residential properties?

A. I would think that is correct.

Q. And you would say a 33 per cent ratio of loans is a pretty substantial amount of the loan business of the bank, wouldn't you?

A. It is sizeable.

Q. Wouldn't you even go so far as to say substantial, sir?

A. That is a matter of definition.

Q. Well, is a third a substantial amount of a hundred?

A. Sizeable.

Q. Is 300 million dollars a substantial amount or only a sizeable amount?

A. I have no definition.

Q. You have no opinion as an economist?

A. Substantial and sizeable, those are matters of qualitative difference.

Q. You don't think there is much difference between the two, do you, without quibbling. I don't say you have been, sir.

A. I would say that it is a large proportion of their—

Q. (Interposing): A large proportion of their loans. That satisfies me. Now, have you any notion of the proportion (1684) of interest income derived by national banks from mortgage loans as compared with interest income from all loans of the banks in 1952, just an approximation?

A. All national banks in the country?

Q. Yes, just your best judgment.

A. I would hate to hazard a guess offhand on that. I haven't looked the matter up for some time.

Q. Well, let's get down to the Michigan National Bank, which is really what we are here about. There has been an exhibit offered in this case, No. 202, and that shows the statement of condition of the Michigan National Bank as of December 31, 1952, a lot of other years, but I am pointing to the 1952 column, and there has been testimony, Professor, that the Michigan National Bank had 26 or approximately 27 million of FHA mortgages at that time, 34 or 35 million of other mortgages, and some 7 million of improvement, FHA improvement loans, and that after deducting the non-residential amount, we had about 70 million out of a total loan resource item of 148 million.

Q. Would you say in your opinion that was a substantial amount of the Michigan National Bank's assets in business, loan accounts?

A. Substantial amount of the loans?

Q. Yes, sir, and wouldn't you say that 70 million in reference to the total resources of 309 million was a substantial (1685) portion of the bank's resources at that time?

A. It is a sizeable proportion.

Q. Sizeable. Pretty great, wasn't it?

A. Sizeable.

Q. 22 per cent, wasn't it? 22 per cent of its business?

A. I don't know the percentage.

Q. Well, you can multiply three times seventy, or 22, rather. That is one fifth, isn't it? You divide 70. 22½ I think the accountants testified to. You will take their word, I assume.

A. I will take the accountants' word.

Q. 22½ per cent, I believe was their figure. You call that a substantial portion of their assets, too?

A. Sizeable portion, sir.

Q. Sizeable. You are sort of afraid of the word "substantial," aren't you?

A. That is a legal term.

Q. It is an English term, has an English meaning, and I am using it in the ordinary English, non-legal term. Do you understand what substantial purports to be, Professor?

A. It has no meaning to me any longer. It has been bandied around.

Q. What was your meaning before it was bandied around, sir?

A. Sizeable, plus.

Q. Now, looking at the Exhibit 205, which shows the operating (1686) statement of the Michigan National Bank, and pointing to the column for the year 1952, the testimony has been, and it shows, that there is income from loans, mortgage loans, of approximately 2 million 6. Isn't that correct?

A. That is correct.

Q. And then I think the testimony in our Exhibit 104 shows an additional 500, almost 600 thousand dollars, making 3 million 1. . .

Would you say that is a sizeable—to use your term—amount of the total interest income of $11,000,000 by the bank in 1952?

A. I would.

Q. Would you go so far as to say it was substantial in this case?

A. I don't know what it means.

Q. Would 26 per cent of the total interest income be considered substantial by you, sir, in your opinion?

A. It is important.

Q. It is important.

A. Sizeable.

Q. Important and sizeable. You go that far?

A. That is right.

Q. Now, you talk about a bank having a monetary function. Would you show me on this operating income statement what revenues are derived from that monetary function? I am again (1687) showing you Exhibit 205.

A. The monetary function, sir, is rather difficult to identify on the income statement. It is much more identifiable on the asset and liability items.

Q. Can you point out anything from the monetary function that you described?

A. Sir, the monetary function that I described had reference to the demand deposits owned by the bank. The demand deposit can be associated more with the non-earning assets in the form of primary reserve. That is cash, balance of other banks, reserve to the Federal Reserve, items in process of collection.

Q. They earn no money on that; do they?

A. They do not, and also since those funds are subject to check on demand, they have to be kept in fairly liquid form, so that bank managers, I believe, would associate the demand deposits with their most liquid secondary reserve assets, such as shorter term government securities and with their commercial loans, and that would be the largest category on the balance sheet.

Q. Yes.

A. Now, this income statement doesn't separate interest on shorter term securities. It is on all securities. And it does separate mortgage loans. I would be inclined to tie that up with their time deposits.

(1688) Q. Right.

A. And the installment loans perhaps a little more with time than demand deposits. The general loans, which I take it are like industrial, commercial and shorter term, but there would be some term loans. That category, general loan interest, I would have to have defined, but if I am assuming properly that they are larger commercial loans, that item would tie in with the monetary side of the business more than these other assets.

Q. But the biggest earnings are from functions other than the monetary functions you described, isn't that true?

A. No, I don't believe so.

Q. Well, let's go back. Interest on securities.

A. That can be tied with the monetary.

Q. And it can also be tied with time deposits because they run for five years, don't they, generally they vary in duration?

A. What do you mean?

Q. The securities, like government bonds, vary in various durations, isn't that correct?

A. Some of the securities would be associated with time deposits.

Q. And so too the general loans, the longer term loans, made to big industrial corporations, run anywheres from three to five years, isn't that correct, sir?

A. The longer term loans?

(1689) Q. Yes.

A. Would be more associated with time deposits.

Q. And mortgage loans are certainly with time deposits aren't they?

A. No, I would not include all mortgage loans in time deposits. The FHA loans being guaranteed might be.

Q. And that is why they take lower interest rates, because the government guarantees it, isn't that true?

A. That is why banks take lower interest rates.

Q. Yes. They don't make as much.

* * * * *

(1692) Q. Professor Woodworth, referring back to the changes in the practices of national banks in the early 30's, at least prior to '52, did they not also—did national banks not also change the method of payment by the borrower on residential mortgages from a quarter and semi-annual payment to a monthly amortization plan?

A. All institutions did, including national banks.

Q. Including national banks, and that is another one of the changes that national banks made in their mortgage end of (1693) their business, was it not, sir?

A. Yes.

Q. Now, Professor, to get back to the share investors again, I believe you testified that there wasn't any substantial difference to a share investor, whether he made a share investment or made a deposit; he was interested in the return, wasn't he?

A. And safety.

Q. And safety?

A. Yes.

Q. And he also considered what he would get from a commercial savings bank deposit, did he not?

A. Right.

Q. Is it not true, sir, or do you know that a savings depositor in a commercial bank is a creditor of the bank whereas in Michigan, an investor in shares in the savings and loan is a shareholder in the corporation?

A. That is correct, legally speaking.

Q. Well, let us see factually. The commercial bank agrees to pay an agreed amount of interest to the depositor, does it not?

A. That is correct.

Q. And if it fails to pay that interest, the depositor can sue them or the bank is in default, is it not?

A. That is correct.

(1694) Q. There is no agreed rate of return on savings shares, is there?

A. No agreed rate.

Q. There is an amount that is declared as a dividend by the directors of the savings association, isn't that correct?

A. That is correct.

Q. And if there isn't sufficient earnings, there is no dividend paid?

A. Correct.

Q. And similarly, in a national bank, if the bank doesn't make sufficient earnings, it won't pay or declare a dividend?

A. You are talking about—

Q. (Interposing): On their shares, national bank shares?

A. That is correct.

Q. Now, savings depositors in a national bank don't have any vote, do they?

A. That is correct.

Q. They are merely a creditor of the bank?

A. Correct.

Q. And a savings shareholder has the right to vote, doesn't he?

A. Yes, sir.

Q. Now, in the event of insolvency or liquidation, a depositor is paid first before a shareholder in national banks, isn't he?

A. That is correct.

Q. In the savings and loans, there aren't any depositors, are (1695) there?

A. That is correct.

Q. And, therefore, in liquidation, outside of the small amount of expense or something that might be, the shareholder starts participating immediately, doesn't he?

A. I can't answer this question. I would have to explain my answer.

Q. O.K. The undivided profits and surplus of a savings and loan association goes to the shareholder, doesn't it?

A. In case of liquidation?

Q. Yes, he is the owner, then?

A. In case of a solvent liquidation.

Q. Right, and if the savings and loan association loses money, why, that reflects on the ownership or the interest of the shareholder, doesn't it?

A. It does.

Q. And if it makes money, why, there is more money available for dividends or to put in reserves and so forth, isn't there?

A. That is true.

Q. Yes. Now, an investor in the savings and loan association invests primarily for the return he gets on his investment, doesn't he?

A. And safety of the principal.

Q. And safety, and the fact I think you pointed out before that there are no deposit liabilities in savings associations (1696) makes for greater safety of the investment, doesn't it, than a national bank which has deposit liability, some of which is on demand?

A. What is your comparative? Are you comparing the share account with the time deposit of the bank?

Q. No, I am comparing safety. You said safety and I said safety of shares of savings and loan with shares of a national bank. In a savings and loan, there are no deposit liabilities and in the bank, there is a substantial deposit liability. So, therefore, isn't that the reason why you say shares in savings and loan have a greater degree of safety?

A. Than shares of national bank?

Q. Yes.

A. The answer is yes.

Q. And when a national bank takes time or commercial demand deposits, owing the money and investing that money in assets still owes a dollar amount on the in business, it still owes a dollar amount on the deposit, doesn't it?

A. That is correct.

Q. And therefore, the risk of a shareholder in a national bank of shares is substantially greater than the risk of a shareholder of a savings and loan association which doesn't have all that deposit liability?

A. The risk is substantially greater. The opportunity for gain is also substantially greater.

(1697) Q. And that is true in all types of stock, isn't it?

A. Common stock.

Q. In other words, if I want to invest in a more speculative venture, I stand to make more money in the common stock than if I buy a defensive stock like the public utility company?

A. You stand to lose more.

Q. I stand to make more on speculative, and I stand to lose more, isn't that correct?

A. That is correct.

Q. In other words, if I want a good defensive stock, I buy a high-grade public utility because it doesn't go up much, probably doesn't go down as much, and I don't take as much risk, isn't that correct, sir, as compared—

A. (Interposing): I can't interpret your motives.

Q. I am trying to get your thinking.

A. Are you wishing me to compare the purchase of a public utility common stock with speculative common stock?

Q. Yes, sir.

A. Of course, the public utility of the nature you have described would be a safer investment than a speculative type common stock, an industrial or commercial enterprise.

Q. And the greater risk you take, you might make more money, but you might lose more money?

A. That is correct.

Q. Now, investors, in your opinion, in 1952 or from your knowledge, (1698) is it not true that investors in shares of savings and loan associations were generally of the same economic class as depositors in savings banks?

A. Approximately the same.

Q. And there were a lot of owners of shares of bank stock in the same economic class also?

A. I would want to comment separately on the owners of bank stock.

Q. The purchasers of shares of savings and loan come from all economic classes, do they not?

A. Principally from the lower and the middle income groups. Very small amounts in proportion, in number very small, for the high income group.

Q. Do you know of a Horace Russell, General Counsel of the United States Savings and Loan League, who wrote a book, "Savings and Loan Associations?"

A. I don't know him. I know his name.

Q. Do you know him by reputation?

A. I just heard his name.

Q. Do you know anything about his reputation?

A. No, I do not.

Q. Do you agree or disagree with his statement when he says, on page 1 of the Savings and Loan Associations:

> "The savings and loan association is frequently referred to as 'the poor man's bank.' However, it will (1699) be noted that the average account in them is higher than the average savings account in commercial banks, mutual savings banks or postal savings bank, and is probably higher than the average cash value of insurance policies."

A. I presume he is correct. I have no way of repudiating it.

Q. And you agree or disagree with his statement, on page 2:

> "An increasing amount of capital is invested in these accounts by perpetual and long-term funds such as cemetery associations, colleges, universities, foundations, fraternal organizations, charitable in-

stitutions and various pension and retirement funds as well as commercial corporations."

A. I would disagree with that statement. The proportion of savings and loan share accounts held by such institutions as mentioned would be in numbers small, infinitesimal, and in proportion to total share account would be nominal.

Q. You disagree with the statement of the General Counsel for the United Savings and Loan League?

A. I do.

Q. And you know of a Mr. Norman Strunk, Executive Vice-President of the United States Savings and Loan League?

A. Yes, I have heard of him. I don't know him personally.

Q. What is his reputation in the savings and loan business?

A. I assume it is very good.

Q. Do you agree or disagree with his statement appearing in the (1700) "Savings and Loan News" of April, 1954:

> "A check of the occupations of savers discloses that our institutions have a slightly higher proportion of savers in the executive, professional, merchant or business owners class, 36 per cent, than banks, 32 per cent."

A. I presume that is correct.

Q. You assume it is correct?

A. I have no way of checking it.

Q. And you agree or disagree with his statement, or your opinion, on the "Savers using the facilities of our institutions"—that is savings and loan—"have a slightly higher income than those which typically use banks, though the differences are not significant?"

A. I particularly agree with the last part of that statement.

Q. Well, you referred yesterday in your testimony to the "Savings and Loans principles of the American Savings and Loan Institute," did you not? In your opinion, do you agree or disagree with this statement appearing on page 87 of part 1, relating to savings and loan shares:

> "Investments in savings and loan accounts represent an attractive investment for trustees, executors, administrators, guardians and other fiduciaries, financial institutions such as trust companies, insurance companies and credit unions, eleemosynary institutions, (1701) educational institutions, cemetery associations, private business corporations, public depositories and public officials having control of funds. Savings and loan accounts generally offer a favorable rate of return in comparison with interest available on other securities of comparable safety."

* * * * *

(1702) A. The statement is made by a man who is obviously attempting to put the best foot forward and promote the savings and loan business.

I think the statement is perfectly fair that savings and loan shares offer opportunities in this area. The fact is that the proportion of total savings share accounts in such accounts as you have mentioned in that quotation is very small dollarwise, and the proportion of total number of savings accounts would be infinitesimal.

Q. That is your opinion?

A. That is my opinion. So far as the idea that savings share accounts are the best possible commitment for that type of funds, it raises a large investment ques-

tion which I could comment on, but I doubt whether it has relevancy here in this proceeding.

Q. Do you happen to have information of the number of accounts in savings and loan associations in Michigan in excess of $10,000?

(1703) A. I do not.

Q. You do not?

A. No.

Q. And do you happen to have a record of the number of corporate investors or trustee investors in savings and loan in the State of Michigan?

A. I do not.

Q. And you don't have that information in respect to savings and loans operating in cities where the Michigan National Bank operates?

A. I do not.

Q. Now, you know, do you not, Professor, that savings and loan associations in 1952 in Michigan, that it was not necessary for an investor in shares to become a borrower of the association?

A. That is correct.

Q. And you also know, do you not, Professor, that in 1952 it was not necessary for a borrower of a Michigan savings and loan association or federal one operating here to be an investor in the shares?

A. I believe that is correct.

Q. And you also know, do you not, that in 1937, the legislature of Michigan created a new type of shares, of optional shares for savings and loan shareholders? Do you know that or don't you?

(1704) A. I believe I can say that I was aware of that change.

Q. What is the change that you were aware of?

A. The change that a share account depositor or share account holder could put in any amount of money

at any time or withdraw any amount at any time rather than having to engage in a definite installment program of any type.

Q. In other words, he wasn't committed to buy a definite amount of shares over a period of time?

A. That is correct.

Q. He could buy one set of shares and be through with it if he wanted?

A. He was put in the same position as a depositor in that sense.

Q. That hadn't obtained before 1937 as to the type of shares that could be purchased in a Michigan savings and loan association, had it?

A. I am not informed on that completely.

Q. Now, since a depositor, a savings shareholder did not have to be a borrower, his main interest was in his rate of return from the association, wasn't it?

A. And his safety.

Q. And the safety of his investment. And since a borrower of the association did not have to be a shareholder investor, his only interest was in getting the best and most advantageous type of mortgage he could get, isn't it?

A. If you include all of his desires and wants in getting and (1705) borrowing of either bank or savings and loan, the answer is yes.

Q. Right. This wasn't the method that was employed originally in the operation of savings and loan associations, was it, Professor?

A. No.

Q. Originally—

Mr. Dexter (interposing): Would you define your date, originally?

Q. (By Mr. Klein): In the earlier times.

Mr. Dexter: Specifically the date, Mr. Klein.

A. I would want a date.

Q. (By Mr. Klein): Well, you pick the date. You know the facts. You are the expert, sir. You give your own dates. Originally—you went back to the early history in this country. Wasn't it true that a borrower had to be an investor in shares?

A. Before 1900, we will say, if you can use that term.

Q. In Michigan?

* * * * *

Q. (By Mr. Klein): Well, let us start since the Act 50 of 1887 in Michigan.

A. I am not familiar with the Michigan law.

Q. You don't know about the Michigan law?

(1706) A. That is correct. All of my observations are—

Q. (Interposing): In general, then, in the early times that savings and loans were operated in this country, and you gave same dates in your testimony—an investor had to be a borrower or a borrower had to be an investor, and vice versa, isn't that true?

A. It is true except that a borrower naturally would be very small of the shareholders; it was more or less of a nominal proportion.

Q. In other words, the shareholders would be committed to make a definite or weekly or monthly payment to the Association for a period of time?

A. Yes.

Q. And if they failed to honor their obligation, there would be fines and penalties against them?

A. Yes. I am sure there were some penalties.

Q. And then of the group of shareholders who were thus committed to make weekly or monthly payments out of their earnings or whatsever else they had them from, the right to borrow was auctioned off, wasn't it?

A. I don't know, sir.

Q. Well, the only borrowers could be from shareholders of the association; they didn't have outside borrowers except from shareholders?

A. I ~~think~~ that is correct.

(1707) Q. And any borrower had to subscribe for as many investment shares as would equal the dollar amount of his loan, isn't that true, sir?

A. I don't know.

Q. You didn't say that it was incorrect?

A. I don't know.

Q. You testified either yesterday or today that in your opinion savings and loan associations hadn't changed their business practices. Do you now want to change your testimony in view of the fact that in 1952—

* * * * *

A. I was talking about the period even before 1900. My previous testimony, if that is what you are speaking of, I recall the last question asked me this morning that savings and loan associations had not changed their business in any substantial way since 1930. I am using the term "substantial."

Q. You know what it means this time, it that right?

* * * * *

(1708) Q. * * * But there had been substantial changes in building and loan associations from the original method of operating of poor people committing themselves to weekly or monthly commitments in savings from which they could borrow to build homes, isn't that correct, sir?

A. From the earliest days, there have been considerable changes in the technical methods by which this type of organization operates but ~~there have~~ not been substantial changes in the character of the business in terms

of accumulating small thrift accounts and lending those accounts for home building purposes.

Q. But the truth is, now, you have already testified and there has been an abundance of testimony that investors were primarily interested in the return from their investment and safety, isn't that true?

A. Yes, investors are primarily interested in those two things.

Q. And the borrowers were not interested in the investors, were (1709) they?

A. (Pause.)

Q. The borrowers borrowing money on a loan, on a mortgage weren't interested in getting the best mortgage they could?

A. You are referring now—

Q. (Interposing): Now, as of 1952.

A. That is correct.

Q. And the borower didn't have to be an investor any more?

A. That is correct.

Q. That is a substantial change, isn't it, in the procedure of operation?

A. In the procedure of operation, but not in any substance.

Q. Not of any substance? Do you know a Dr. C. James Pilcher of the University of Michigan, School of Business Administration?

A. I know him quite well, sir.

Q. And what is his position at the University of Michigan?

A. He is an Associate Professor of Finance.

Q. And is he highly regarded in his field?

A. I think he is, sir.

Q. Do you agree or disagree with the following statement attributed to Dr. C. James Pilcher, a colleague of yours at the University of Michigan, and I quote—

* * * * *

(1710) A. Is this a statement of Mr. Pilcher?

Q. I think it is, sir, and it is attributable to him. We say it is, but regardless of whether it is or isn't, I will ask you the question and you express an opinion as an expert:

> "Up until 1951, savings and loan associations were exempt from all Federal income taxes. In the early days of these institutions, the transactions of the associations were confined to members and no one could participate in the benefits they afforded without becoming a shareholder. Individuals became investing members in the expectation of ultimately becoming borrowing members as well. Members could not cancel their membership or withdraw their shares, before maturity without incurring heavy penalties. The fact that the members were both the borrowers and the lenders was the essence of the 'mutuality' of these organizations (1711) and the basis for the association's tax exempt status. Although some of the old forms have been preserved to the present day, few of the associations have retained the substance of their early mutuality. * * *"

* * * * *

> "The steady decline in the proportion of share accumulation loans is evidence that the character of these organizations has changed. More and more investing members are becoming simply savers, while borrowing members find dealing with these savings and loan associations only technically different from dealing with other mortgage lending in-

stitutions in which the lending group is distinct from the borrower."

Now, I will hand it to you, and you can read it sentence by sentence and comment if you wish, sir, your opinion.

A. "Until 1951, savings and loan associations were exempt from (1712) all Federal income taxes."

I believe that is true.

> "In the early days of these institutions, the transactions of the associations were confined to members and no one could participate in the benefits they afforded without becoming a shareholder."

I would agree with that, if they confine early days to 1900 or before.

> "Individuals became investing members with the expectation of ultimately becoming borrowing members as well."

I would disagree with that statement. There was no obligation so far as I know to borrow. One could own share accounts in any amount within the limits of the total amount of share accounts that would be sold by the association, and they weren't forced to borrow.

Q. The word is "expectation", and not "obligation".

A. I don't know about the expectation, but I would assume there were a great many share owners then that had no expectation of borrowing, and if they did have, it might have been very vague, so that at that time there was a very definite separation, in fact, between the shareholders who did want to borrow and those who did not want to borrow.

> "Members could not cancel their memberships or withdraw their shares before maturity without incurring heavy (1713) penalties."

I would agree that there were penalties, but I don't know how heavy they were.

> "The fact that the members were both the borrowers and the lenders was the essence of mutuality of these organizations and the basis for the association's tax exempt status."

I would disagree with that statement. I think the fact that the members were both borrowers and lenders was a rather superficial aspect of the organization. The mutuality in substance applies to the analogy with a mutual savings bank which we call a mutual organization. There was no tieup ever between the depositors and the lenders of those organizations. The main point is that they are not private profit institutions with capital stock that is bought and sold on the markets, and, as we have discussed before, is a sort of an investment where you take great chance of gain and great chance of loss.

* * * * *

> "Although some of the old forms have been preserved to the present day, few of the associations have retained the substance of their early mutuality."

(1714) I would disagree with that statement because the mutuality is based on substantial facts that I just commented on and not on the mere superficiality that I would term one of whether or not there is some more or less tenuous connection between being a borrower and a lender.

I just commented on the fact that a shareholder did not have to borrow at any time so far as I know in the early associations.

Q. But he couldn't borrow unless he was an investor, could he?

A. No, that is true, in the early days.

Q. Yes.

A. "Instead a steady decline in the proportion of share accumulation loans is evidence that the character of these organizations has changed."

Yes, changed in that superficial way that I have just explained, but not in substance.

> "More and more investing members are becoming simply savers, while borrowing members find dealing with these savings and loan associations only technically different from dealing with other mortgage lending institutions in which the lending group is distinct from the borrowing."

I agree with that statement.

* * * * *

(1715) Q. By whom were you retained to testify in this case?

A. By the Department of Revenue.

Q. Have you consulted with the building and loan people?

A. I have sat in on conferences with counsel for building and loan.

Q. Quite a bit of them?

A. Yes.

Q. And you know they are very interested in having their taxes kept at the basis it is? You know that, don't you?

A. I know they are interested.

Q. Very interested, at least interested enough to spend a lot of time with you?

A. That is correct.

* * * * *

Q. * * * Do you agree or disagree with the statement of Judge Taft, later Chief Justice of the Supreme Court of the United States, when he ruled in a building and loan case, the Hubbard case, "The chief object of building (1716) associations is to encourage the building of small houses by poor people and the savings from their earnings week by week of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house."

Wasn't that the early purpose of building and loan associations?

(1717) A. That was the main purpose in the early days.

Q. In the early days. But now since you don't have to be an investor to be a borrower, that isn't the purpose any more to that degree, is it?

A. Not stated in those words. In substance, it is very similar. I presume you don't want me to state my position on it.

Q. Well, you testified this morning that a borrower isn't any different from a borrower in a bank on the same terms or competitive banks; that is correct, isn't it?

A. That is right.

Q. And an investor is interested in return on his investment, and he isn't interested in the borrowing except to make as much money as he can on his investment; isn't that correct?

A. That's correct.

Q. Now, you talked about mutuality. Now, let us see what you mean by mutuality.

Do you mean that it is mutual because shareholders all put their money in a common enterprise and share the earnings from that common enterprise? Is that what you mean by mutuality in 1952, savings and loan associations?

A. Yes, as opposed to private enterprise.

Q. And they put their money in the enterprise to make a return on their money, don't they?

A. And for safety.

Q. With safety. And the higher the return they get consistent (1718) with safety, the better they like it; isn't that true?

A. Of course.

Q. And the higher the return on the shares, the more people are attracted to investing in those shares; isn't that true, sir?

A. Yes, but that is not the only consideration.

Q. No, but they are interested in earning money on their investment?

A. Of course.

Q. And is that what you mean by mutuality, that they all put their money in a common enterprise on which they hope to make a profit and a return consistent with safety? Is that what you mean by mutuality?

A. Yes.

Q. And the same is true of a shareholder in a national bank. All shareholders put their money in expecting to have the company make money, and they get dividends on it; isn't that true, sir?

A. Yes.

Q. And the same talk of mutuality of mutual savings bank is the same as you discussed for savings and loan associations, isn't it, sir, the same kind of thing as far as mutuality is concerned?

A. Mutuality between savings and loans and mutual savings banks is about the same proposition.

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(1719) *Re-direct Examination*

By Mr. Dexter:

Q. Now, before lunch, Professor Woodworth, I believe that Mr. Klein asked you if there had been a large growth in the mortgage business of national banks since 1930, and I believe your answer was "sizeable."

Would you explain what you mean by "sizeable"?

A. Mr. Klein, as I recall, was talking about growth in dollars of real estate loans. I said "sizeable" meaning also in dollars.

In order to define that term, extent of growth, whether we call it sizeable or important or what, we need to take into consideration the fact that dollars have changed markedly since 1930.

I think the records would show that the value of the dollar is not much more than a third of what it was in the early thirties. Prices have gone up, in other words, three times. So from that standpoint, there would have to be three times as many dollars now in real estate loans or any other dollar category we are talking about as there was at that time in order to have the same real income or real assets reflected.

Now, all apart from this more or less superficial growth in dollars that is tied in with inflation of the dollar is the substantial growth this country—I had better not use (1720) that term, sir—the important growth this country has experienced in real terms, which has been in total output, total real national income, 3 per cent, approximately, a year.

In 1930 it was—well, let's see. This case, 22 years ago, up to 1952—so that there would in dollar terms have been an expectation of perhaps at least two-thirds growth in real estate loans in other dollar categories just from the standpoint of real growth; but I should

think that if we are considering this matter in all its aspects, we ought to think of it proportionately.

That is, I think you will find that the record that we have submitted shows that in 1930, the proportion of total real estate loans of national banks to their total assets was 5.1 per cent, and I believe, if my memory serves me well, at the end of 1952 that proportion was 7.6 per cent compared with 5.1 per cent. I would call that a very moderate change over a 22-year period. In fact, when you spread it out over 22 years, it is rather significant proportionately.

And in terms of residential loans, in '52 the proportion, as I recall, was 6 per cent to total assets of national banks in 1952.

So that we ought to look upon that growth both from a proportionate standpoint and in real terms.

* * * * *

(1721) *Re-cross Examination*

By Mr. Klein:

Q. I think your testimony was that national banks could hardly make any residential loans in 1927?

A. I didn't say 1927. I said 1930.

Q. I am talking 1927 now.

A. The McFadden Act was passed in 1927. That opened up the opportunity for the national banks to make loans for five years.

Q. But they were limited only to five years.

A. Five years.

Q. And then they were liberalized when, sir?

A. Liberalized further in 1934 and 1935.

Q. Ten years, and then twenty and twenty-five years on FHA.

A. Yes.

Q. Don't you think that accounts for a great deal of growth of national banks in the residential mortgage business?

A. Of course the growth that has happend has been due to the liberalization. Otherwise, it wouldn't have taken place.

Q. And it has been tremendous—almost from zero in '27 to what it is today; isn't that correct, sir?

A. The growth in dollars has been large. I have just commented on the fact that that is, to a very large extent, threefold due to the inflationary rise of prices, and to a large extent, you expect your national banks to grow with the economy, and (1722) I would, too, so that a very large part of the segment of it is the real growth.

Q. Professor, in 1927 national banks could hardly make a real estate loan on residential property except for one year; isn't that correct?

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A. Before the McFadden Act, which was passed, as I recall, in February of 1927, the national banks were limited to making real estate loans to one year maturity, to be renewed, of course.

Q. (By Mr. Klein): Short term, wasn't it, and then it was made five years, which is a short term, isn't it, as far as mortgages go?

A. That is correct.

Q. And then it was made ten years, which is a longer term?

A. Yes.

Q. And then they were permitted twenty and twenty-five years, in encouragement for national banks to grant mortgages on residential homes; isn't that true, Professor? You don't want to change your testimony on that, do you?

A. No, I don't want to change my testimony.

Q. And the figures of the Michigan National Bank show, I think, that 22½ per cent of their assets as at December 31, 1952 was invested in residential mortgages or improvement loans. I (1723) think you said a very important—to get your words, a sizeable and important amount. Isn't that correct?

A. Yes.

Q. And that compares with 7 per cent, the national average of national banks you have just quoted?

A. I don't recall the 22 per cent. You are reading that into the record.

Q. It is $70,000,000 out of $309,000,000 assets.

A. Well, then it is 22 per cent.

Q. As compared with 7 per cent which you say is the national average of national banks?

A. Yes.

(1724) Q. So the Michigan National Bank had three times the national average, didn't it?

A. That is correct.

Q. And its income from operations on that type of loan was 26 per cent of its total income, interest income from all loans and you said that was sizeable and important, did you not?

A. Yes, that is sizeable.

Q. And important?

A. Important.

• • • • •

The Court: I would like to ask a few questions for my own edification. If either counsel wants to object, it would be perfectly all right.

One of the things that we find referred to originally in the Supreme Court cases that have been talked about by the lawyers and will be considered by me on mutual savings banks.

Apparently, it was a New York organization of that type—I have forgotten—New Haven or where it was—involved in the Bank Redemption case, and there was one out in Iowa, I think. At least, there apparently were such things as mutual savings.

Can you tell me just how they operate? To shorten it up, I will state as I understand it, it had no stock and (1725) at least in one of those states, the trustees who were operating it were appointed by the state.

I don't know whether that was symptomatic of the whole institution or one particular state.

Have you made a study of the nature of those animals so that you can tell me a little about them?

A. I can tell you in general. I have served as a trustee for one of those institutions.

Mr. Dexter: I think it is in the record, 1936 through 1952.

A. 22 years. I cannot remember when I took the position, but the background is that usually a few public spirited citizens in a community would start up an organization of that kind and probably at the outset simply make their own deposits, enough of a deposit to meet the law to permit such an organization and then they had an organization called the trustees which was a group that were not elected by depositors but were self-perpetuating. There actually is what is called in most cases a corporation which is a larger group represented by the depositors and then they elect a smaller number of trustees that actually manage the bank. There is no capital stock in the sense of a private commercial bank. The funds that they have above the amount of deposits are called their capital funds and it would be comparable to these surplus and reserves of savings and loan associations. They are not (1726) organized to make a profit. It is a private group. The trustees served as a com-

munity proposition or were paid a very nominal fee of a dollar or two dollars to attend trustee meetings. The interest rate paid was declared by the trustees in their discretion; any net profit above that was carried to surplus and undivided profits of the mutual savings bank.

The Court: In the first place, their deposits were all savings deposits?

A. All savings deposits.

The Court: Now, when they loan money out, how do they determine who borrows the money? The trustee or did they have certain standards of poor people or something else?

A. It was up to the trustees. The money was put into local real estate mortgages, mostly home loans just as is true of the savings and loan association.

The Court: Did they compete as far as the rate of interest was concerned with other institutions that were loaning money?

A. Yes.

The Court: That is four or five per cent or whatever it might be, whatever might be the going rate?

A. They had to meet competition, whether it is from a commercial bank or a cooperative bank or savings and loan association.

(1727) The Court: Did they cut it down? Did they undersell?

A. No.

The Court: What happened to their profits? They must have had some? All of these other institutions that we have been hearing about here like national banks and building and loan and savings and loan have profits.

You say they go into reserve, capital and reserve, but they don't build up to hundreds of millions of dollars, do they, or anything of that sort? Over a hundred years, you could get quite a lot of them.

A. The capital funds, so-called, the surplus and undivided profits is usually kept somewhere between eight and twelve per cent of the total assets, and when a mutual savings bank has capital funds with that protection they are in a position to pay out all of the earnings into dividends or interest.

The Court: Dividends to whom?

A. Dividends to the depositors who are comparable to the savings share account holders in the eyes of everyone who is in the community.

The Court: The depositor makes any profit over and above those reserves that you are talking about?

A. That is right. There is no group that has any special profit out of it. In fact, like a good many community ventures, the trustees usually give quite a bit of time to it, but are (1728) not paid as such for their time.

The Court: And do the depositors have a fixed rate which is guaranteed to them?

A. No.

The Court: Or are they something like the building and loan associations?

A. It is like the building and loan; it can be raised or lowered. There is no guaranty.

The Court: It depends on earnings?

A. They are called deposits, but I don't know. I think under the law, it might still be regarded as creditors, but so far as the dividend rate goes, that is entirely up to the trustees.

The Court: I see.

(1729) Q. (By Mr. Klein): You are talking about the time you were on the board. That is recent times you are talking about.

A. That is right.

Q. You are not talking about the early—

A. (Interposing): I think the character of the mutual savings bank has been much the same.

Q. You are not talking about the early times. You are talking about the time you were on the board, and that is the years you stated.

A. I am talking about, we will say, any time from 1930 to the present time.

Q. Yes, sir.

The Court: Have you made any study of them in connection with your scholastic work at all? Do you know anything about their history, whether this plan that you have talked about here was a plan back before 1900 at all, or would that be purely guess work?

A. The mutual savings bank go way back in our history.

The Court: I thought you testified to one being formed in 1809.

A. Right at the turn of the century. It is a little bit vague just when the first one was formed, but they went back, I believe, to 1799, one in Birmingham, England, which I believe was the first mutual savings bank.

The Court: And this method of operation you (1730) described, do you know from your studies where they did use substantially that method? During the nineteenth century, 1850 on, would you say?

A. Yes, the mutual savings bank of New England and New York State and New Jersey. Principally they are in that northeast section of the country. There are somewhat over 500 of them now, but their history goes a long way back, and they have been substantially under that same plan from the very beginning, mutual in the sense I have described, without any private profit group getting more from the operations, as gaining or losing from the success or failure of the operation.

The Court: In view of the fact that the Court brought this out, has either counsel—I am thinking, of course, about what I am going to have in mind as background material when I read this Mercantile case and the other cases which involve those mutual savings banks. Does either counsel have anything he wants to say by adding to what the Professor said or contradict him in any way with respect to the nature of those institutions?

Mr. Van Zile: My feeling is—I don't propose to have made a study—that the mutual savings bank in New York has undergone a change from the days of the Mercantile case in the 1880's until the present day. Also Davenport and Bank of Redemption cases.

The Court: The Bank of Redemption case, I think (1731) pointed out some differences of the laws of the different states, but rather minor, at least according to the Supreme Court.

* * * * *

(1735) FAIRLES, RUSSELL, was thereupon called as a witness in rebuttal on behalf of the plaintiff, and, having been previously duly sworn, testified as follows:

Re-direct Examination

By Mr. Klein:

Q. Mr. Fairles, I will show you a document of one page which has been marked Plaintiff's Exhibit 105, and ask you what it is? Don't say what is in it, just say what it is.

A. It is a report covering the transfer of common stock of Michigan National Bank for the calendar year 1952, showing the number of shares transferred.

Q. And the proportion to the number of shares?

A. The proportion to the total outstanding as of December 31, 1952.

Q. And that correctly reflects the records shown in your stock transfer ledger?

A. It does.

Q. Was it made under your direction and supervision?

A. It was.

Mr. Klein: I should like to offer Plaintiff's Exhibit 105 in evidence.

(1736) Mr. Dexter: No objection as to authenticity, but other objections as to further exhibits on the part of claimant are not waived.

* * * * *

The Court: It may be received.

Q. (By Mr. Klein): And that shows, does it not, that in the year 1952, 42,561 shares, or 8½ per cent of the total outstanding stock was transferred in 1952?

A. That is correct.

Q. I will show you Exhibit 106 and 107 and 108. Would you first describe what Exhibit 106 is, sir?

A. Exhibit 106 shows Industrial Savings & Loan Association, now known as the People's Savings & Loan Association, Battle Creek, Michigan, maturity analysis of conventional real estate mortgage loans made during the year 1952.

Q. And from what did you compile that exhibit, sir?

A. We compiled this exhibit from the work sheets of the Savings & Loan Division of the Secretary of State's office.

Q. And you worked in getting that information along with the representative of the Department of Revenue of the State of Michigan?

A. We did.

Q. This was done yesterday afternoon?

(1737) A. With the examiners. That's right, we did.

Q. And the exhibit shows the years of maturity by various years, does it not?

A. It shows the number of years to maturity.

Q. The number of loans?

A. And the number of loans in those various categories.

Q. And the percentage in each category according to term to the total?

A. That is correct.

Q. And the next is the total amount of each category of loan made—that is, the term?

A. That's correct.

Q. Then the percentage of that amount to the total amount?

A. That is correct.

Q. Then the total aggregate number of years to maturity. What do you mean by that—by adding up all of the maturity years in all of those 305 mortgages, referring to 106, now?

A. That is correct. For instance, taking the first one, it shows four to five years. We took 4½, halfway in between, multiplied by one, and that would give the 4.5, and we followed the same procedure for the balance of the years under the classification of maturity.

(1738) Q. And you divide that aggregate amount by the total number of loans?

A. 305.

Q. And the result is that the aggregate term or number of years to maturity by number of loans is eleven years?

A. That is correct.

Q. And then, the appraisal analysis, you built that up out of these records too, have you not?

A. That is correct.

Q. Showing the number more than sixty per cent and the number and amount less than sixty per cent?

A. Sixty per cent or less; over sixty per cent.

Q. Yes.

A. That is right.

Q. And then, in the farthest column you show average aggregate appraisal by number of loans; how did you do that one, and the column before that, total of the appraisal percentage, what did you do? Add up all of the appraisals or what? How did you get the last figure of fifty-four per cent?

A. We added all of the appraisal percentages, the 176 loans in the first category, the percentages totalled 8,101; we divided that by 176 which gave us forty-six per cent.

Q. You took the total amount, actual amount, though, did you not?

A. The total actual amount of the percentages.

(1739) Q. In other words,—

A. (Interposing): And those over sixty per cent.

Q. In other words, you took 50, 57, 54, whatever the figure was for each loan; you added it to get the 8,101?

A. That is correct.

Q. And then you took the actual percentage or ratio to get the 8420, did you not?

A. The same procedure.

Q. In other words, you took the actual term for the last column and the column before—

A. The actual appraisal percentage and we added them, that is right.

Q. And you came up with fifty-four per cent?

A. And for the total we came up with fifty-four per cent.

Q. 107 is the same kind of analysis for the Marshall Savings and Loan Assoication, conventional loans?

A. That is correct.

Q. And that was prepared in the same way?

A. That is correct.

Q. And Exhibit 108 was for the Saginaw Savings and Loan Association, conventional loans?

A. That is correct.

Q. Made in the same way?

A. That is correct.

Q. Now, why didn't you make the other analysis for the other (1740) savings associations?

A. We made the analysis for these particular three because they were the only three that the auditors had information on their work sheets that showed the monthly payment for principal and interest only. The other showed the taxes and we didn't have information available on the amount of the tax to deduct from the monthly payments in order to determine the number of years to maturity.

Q. And you would have to go to the original records of each savings association and take each mortgage to get the tax to break it down, to final term, wouldn't you?

A. Yes.

Q. And this just happens because these are the way the records are kept by the State governmental agencies?

A. Well, these three happened—

Q. You didn't select them?

A. No, no. We just took them from their records the ones that we could complete a proper report on for comparative purposes.

Mr. Klein: Your Honor, I would like to offer Plaintiff's Exhibits 106, 107, 108 in evidence in connection with the rebuttal or relating to defendants' exhibit series 200.

Mr. Dexter: Your Honor, I will object to them as not being proper rebuttal evidence.

* * * * *

(1741) The Court: * * * they are received.

Q. (By Mr. Klein): Mr. Fairles, in addition to your conventional loans, I take the record shows you made a substantial amount of FHA and VA loans in 1952.

* * * * *

A. We did.

Q. (By Mr. Klein): And they were for what term?

* * * * *

(1742) A. They were for twenty to twenty-five years.

Q. And the average interest rate of VA?

A. The interest rate was four and a quarter per cent.

* * * * *

Exhibits are bound in a separate volume.